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**Concordia and Discordia in Livy's republic  
Roman politics in Ab urbe condita books 21-45**

Cosnett, Steven Baillie

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*CONCORDIA AND DISCORDIA* IN LIVY'S REPUBLIC:  
ROMAN POLITICS IN *AB URBE CONDITA* BOOKS 21-45

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## Abstract

This thesis offers a comprehensive critical analysis of Livy's portrayal of Roman politics in Books 21-45. Although Livy's history provides the most detailed account of politics in the 'middle' or 'classical' Republic, as yet there has been no major study devoted to this important topic specifically. Books 21-45 cover a period of Roman history usually identified in antiquity as Rome's apogee: the republic faced, and overcame, its greatest external threat in the form of Hannibal during the Second Punic War (covered in Books 21-30), then began a period of unhindered overseas conquest (the beginning of which is recounted in Books 31-45). In Roman historiography, success in these ventures was predicated on domestic stability and political harmony. As such, politics plays a relatively small part in a narrative devoted primarily to foreign affairs and warfare.

This thesis is intended in part to explicate how order and cohesion – *concordia* – is maintained in these books, but it also examines cases in which the political order is disrupted, and considers the implications of this *discordia* for Livy's conception of the Roman polity. It concludes that these books of Livy's history illustrate Roman politics at its best, and offer lessons on how the state can function efficiently and peacefully. The era that Livy describes is not without conflict, but these conflicts are typically confronted and dealt with successfully, with the different organs of state (the senate, the consulate, and the tribunate) working together with due deference to the wisdom of worthy individuals and to the collective authority of the senatorial order. But these books represent only a fragment of Livy's narrative, and this thesis argues that they also serve to foreshadow the disorders that will beset the *res publica* in later books.

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S. C.

## Texts and Abbreviations

This thesis uses the most recent Oxford Classical Text editions for the Latin text of Livy Books 1-10 (Ogilvie 1974; Walters, rev. Conway 1938) and 21-25 (Briscoe 2016), and the Teubner editions for the text of Books 26-45 (Walsh 1982; 1986; Briscoe 1986; 1991) and the *Periochae* (Rossbach 1910). The texts of other ancient works quoted below generally derive from the most recent Teubner editions, although for Cicero's *De legibus* and Caesar's *Bellum ciuile* the newer OCTs (by Powell 2006 and Damon 2015 respectively) have been used, as have Maurenbrecher's edition of the fragments of Sallust's *Historiae* (1893), Clark's OCT edition of Asconius (1907), Boissevain's Cassius Dio (1895-1901), Scheid's Budé edition of the *Res gestae diui Augusti* (2007), and Skutsch's *Annales* of Ennius (1986). All translations from Latin and Greek are my own.

Ancient authors and their works are cited according to the abbreviations used in S. Hornblower, A. Spawforth, and E. Eidinow edd., *The Oxford Classical Dictionary*, 4th edn. (Oxford: 2012). For ancient works not listed in the *OCD*, the following abbreviations are used:

Cic. <i>Rab. perd.</i>	= Cicero, <i>Pro C. Rabirio perduellionis reo</i>
Nep. <i>Cat.</i>	= Cornelius Nepos, <i>Cato</i>
Suet. <i>Vita Verg.</i>	= Suetonius, <i>Vita Vergili</i>

Abbreviations for modern works are listed below.

<i>CIL</i>	= 1863–. <i>Corpus Inscriptionum Latinarum</i> . Leipzig.
<i>FIRA</i>	= Riccobono, S. et al. 1940-43. <i>Fontes Iuris Romani Anteiustiniani</i> . 2nd edn. Florence.
<i>FRH</i>	= Cornell, T. J. ed. 2013. <i>The Fragments of the Roman Historians</i> . Vols. 1-3. Oxford.
<i>ILS</i>	= Dessau, H. 1892-1916. <i>Inscriptiones Latinae Selectae</i> . Berlin.
Malcovati, <i>ORF</i>	= Malcovati, H. ed. 1976. <i>Oratorum Romanorum Fragmenta: Liberae Rei Publicae</i> . 4th edn. Vol. 1. Turin. 1st edn. 1953.
<i>MRR</i>	= Broughton, T. R. S. 1951. <i>The Magistrates of the Roman Republic</i> . Vol. 1. New York.
Peter, <i>HRR</i>	= Peter, H. 1914. <i>Historicorum Romanorum Reliquiae</i> . Vol. 1. 2nd edn. Leipzig. 1st edn. 1870.
<i>RE</i>	= Pauly, A., Wissowa, G. and Kroll, W. 1893–. <i>Real-Encyclopädie der classischen Altertumswissenschaft</i> . Stuttgart.



# Introduction

...for from the days of the Tarquins to those of the Gracchi, which was more than three hundred years, tumults in Rome seldom led to banishment, and very seldom to executions. One cannot, therefore, regard such tumults as harmful, nor such a republic as divided, seeing that during so long a period it did not on account of its discords send into exile more than eight or ten citizens, put very few to death, and did not on many impose fines.

– Machiavelli, *Discorsi sopra la prima deca di Tito Livio* 1.4

What seemed obvious to Niccolò Machiavelli – that Livy’s history of ancient Rome, the *Ab urbe condita*, was a fundamentally political text – did not seem obvious to many who studied Livy’s work during the twentieth century. For a long time the political aspects of the *AUC* were neglected and overlooked, because the author himself was imagined to have been essentially uninterested in politics. This view can be found in many of the more influential treatments of Livy’s work. In his assessment of Augustan authors in *The Roman Revolution* (1939), Ronald Syme interprets Livy in light of his social background, as a member of what he considers the ‘pacific and non-political order’ in Roman society.<sup>1</sup> Syme has adjusted his view of the historian somewhat in a later article (1959), but still regards him as representative of a ‘nonpolitical’ class.<sup>2</sup> P. G. Walsh’s important monograph (1961) depicts Livy as ‘a man of purely literary interests’ who dedicated his life to his writing.<sup>3</sup> R. M. Ogilvie, in his commentary on the first pentad (1965), follows Walsh’s lead by stressing Livy’s literary preoccupations.<sup>4</sup> His Livy is therefore not especially interested in conveying ‘political or moral lessons’ *per se* so much as in giving the great characters and pivotal moments of Roman antiquity the lavish treatment they merited; he is a ‘small man, detached from affairs’ of his own time.<sup>5</sup> The influence of this perception of Livy and his work can be seen in recent surveys of ancient historiography: John Marincola (1997), echoing Ogilvie, calls the historian ‘an apolitical man’ whose aim was to ‘enshrine the great deeds’ of the characters who made Roman great, rather than to provide political instruction; Christina S. Kraus (1997) describes Livy as

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<sup>1</sup> Syme 1939: 465.

<sup>2</sup> Syme 1959: 74.

<sup>3</sup> Walsh 1961: 9.

<sup>4</sup> Ogilvie 1965: 5, 25.

<sup>5</sup> Ogilvie 1965: 24-5; cf. 2, 5.

‘fundamentally detached from politics’; Ronald Mellor (1999) asserts that he was ‘not politically engaged’; Andreas Mehl (2011) refers to his ‘political abstinence’.<sup>6</sup>

The idea that Livy was an apolitical author, its surprising tenacity notwithstanding, usually rests on a combination of dubious premises and outdated perceptions. Many of these relate to the little that is known about the historian himself. Others, however, rest on an understanding of Roman politics which has long since been supplanted by a new, more dynamic vision of the Roman Republic.

Here is how Ronald Syme describes the late Republican political system in *The Roman Revolution*:

The political life of the Roman Republic was stamped and swayed...by the strife for power, wealth and glory. The contestants were the *nobiles* among themselves, as individuals or in groups, open in the elections and in the courts of law, or masked by secret intrigue. As in its beginning, so in its last generation, the Roman Commonwealth, ‘*res publica populi Romani*’, was a name; a feudal order of society still survived in a city-state and governed an empire. Noble families determined the history of the Republic[.]<sup>7</sup>

Syme’s view of Roman politics reflects his belief that ‘oligarchy lurks behind the façade’ of all forms of government.<sup>8</sup> Whether or not they shared his belief, many of Syme’s contemporaries conceived of Republican politics in much the same way.<sup>9</sup> In part, this reflects an understanding of the *res publica* that prevailed for much of the twentieth century, whereby the *res publica* was treated, anachronistically, as a state in the modern sense of the term, with clearly defined constitutional norms and a distinct sphere of government. It was natural, therefore, to confine politics to the formal political class represented by the senate. As Livy does not appear to have been a senator – at any rate, in none of the handful of biographical references is he described as such – it was equally natural to assume that he had no familiarity with politics. This perception of Roman politics was also justified by the hypothesis, developed by Matthias Gelzer, that Roman society was permeated by networks of patronage through which the ruling class exerted influence over *clientelae* composed of the lower

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<sup>6</sup> Kraus 1997: 72; cf. 73: ‘a non-participant in the political...world he describes’; Marincola 1997: 29; Mellor 1999: 71; Mehl 2011: 100.

<sup>7</sup> Syme 1939: 11-12.

<sup>8</sup> Syme 1939: 7. Syme’s formulation echoes Robert Michels’ ‘Iron Law of Oligarchy’ (1915), though it is uncertain whether Syme was familiar with Michels’ work: see Ober 1996: 21.

<sup>9</sup> Syme’s dictum is paraphrased by Earl 1963: 7. Ober 1996: 21-22 stresses Syme’s influence on the modern studies of ancient politics, Athenian as well as Roman.

orders.<sup>10</sup> As clients beholden to their senatorial patrons, a large proportion of Roman citizens was held to have had little real political autonomy, and hence was excluded from political analyses. Thus, in the early and middle decades of the last century, studies of Roman politics tended to focus on the senate and in particular on its internal dynamics.<sup>11</sup>

In the latter part of the twentieth century, however, the theoretical underpinnings for these approaches were challenged, as indeed was the very perception of the Roman Republic as an oligarchy.<sup>12</sup> Consequently, the narrow senatorial focus of earlier studies has been largely superseded by a broader discussion about the practice and cultural basis of politics at Rome. Without denying the centrality of the senate, and of the *nobiles* in particular, to the functioning of the *res publica*, current analyses of Republican politics admit a wider conception of politics, one which extends beyond the internal contests of formal political élite of the office-holding class. The character of politics at Republican Rome is understood to have been more open and public than Syme's oligarchic *arcana imperii* imply: greater attention is therefore devoted to the *contiones* and the *comitia*, where the political class and the

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<sup>10</sup> Gelzer 1912: 43-82. Gelzer's influence is widely detectable in subsequent discussions of Roman politics, e.g.; Taylor 1949: 7, 41-7; Suolahti 1955: 15; Badian 1958: 1-13 and *passim*; Scullard 1959: 6-7; Earl 1963: 7-8 and *passim*; Syme 1964: 171; Astin 1967: 27, 28 and *passim*; Brunt 1971a: 48-50; Crawford 1992: 27-9.

<sup>11</sup> Some scholars, following Mommsen, viewed Roman politics within a framework of the ostensible opposition between *optimates* and *populares*, representing conservative oligarchic and democratic or populist tendencies within the senatorial élite: e.g. Marsh 1935; Taylor 1949; cf. Scullard 1959: 7-8. More, however, concentrated instead on recreating the personal relationships and alignments of senators (often described in terms of the 'factions' or 'parties' referred to above), believing this the key to understanding the political history of the *res publica*. This trend is most pronounced among scholars who used prosopography to reconstruct élite networks: the method was pioneered by Friedrich Münzer in his influential *Römische Adelsparteien und Adelsfamilien* (1920) (Gelzer 1912: 102-15 had also postulated the existence of factions during the middle and late Republic); other notable examples of this approach include Schur 1927, esp. 105-41; Syme 1939; Scullard 1951; Cassola 1962; Earl 1963; Gruen 1968; its influence is also apparent in e.g. Scullard 1935: 354-60; Taylor 1949: 7-9, 33-6; Syme 1961: 171-3; Astin 1967: 80-96; Gruen 1974: esp. 47-82, 102-20.

<sup>12</sup> The existence of 'factions', sustained political alliances among the senatorial order, was challenged by Develin 1985: 43-88 and *passim*; Hölkeskamp 1987: 13-17, 41-61; Brunt 1988: 443-502; cf. 1971a: 68; even some of the earlier exponents of the factional model expressed reservations about the efficacy of the approach and about the character of ostensible political groupings, e.g. Astin 1967, 80, 95-96; The importance of patronage and *clientelae*, as they were traditionally understood, to Roman politics was questioned by: Millar 1984: 2, 13-14; 1986, esp. 4-5; Develin 1985: 127-32, 325-8; Brunt 1988: 382-42; Wallace-Hadrill 1989: esp. 68-71; Morstein-Marx 1998: esp. 274-83; Yakobson 1999: 65-123; Mouritsen 2001: 67-79, 96-100, 137-8. For general challenges to the oligarchic conception of the *res publica*, see e.g. Millar 1984; 1986; 1989; 1998, esp. 197-226; Yakobson 1999, esp. 228-33; 2004, esp. 396-8.

*populus* interfaced.<sup>13</sup> Meanwhile, studies of the political élite, rather than attempting to reconstruct factions, now tend to focus on analysing the formal rôle of the magistrates and the senate, and the values and traditions that regulated the functions of both.<sup>14</sup> These studies constitute one important dimension of a more general discussion of Roman political culture, a concept that encompasses both the day-to-day practice of politics and its cultural underpinnings, including the rhetoric, rituals, symbols, social structures, moral attitudes, and unspoken assumptions that together sustained and legitimised the *res publica* as a system.<sup>15</sup> What these approaches have shown is that ‘politics’ during the Republic had a far wider significance than many earlier scholars imagined, one that extends well beyond the senatorial aristocracy. Although active participation in the politics was probably very limited, a significant proportion of Romans (especially the inhabitants of Rome itself) was involved in the political culture of the *res publica*, if only as spectators to the ceremonies and rituals of public life.<sup>16</sup> This is especially true of the wider upper class of which Livy was a member. The historian need not have attended *contiones* often, need never have cast a ballot, much less have been a senator, to have understood and been interested in politics, broadly-construed.

The new understanding of Republican politics has not left Livian studies unaffected. In recent years several scholars have approached Livy with a more expansive understanding of political life, and their work has already shed much light

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<sup>13</sup> E.g. Yakobson 1992 (*comitia centuriata*); 1999 (electoral *comitia* and *petitio*); 2004 (*contiones*); Pina Polo 1996 (*contiones* and political oratory); Millar 1998 (*comitia*, *contiones* and political oratory); Morstein-Marx 1998 (*petitio*); 2004; 2013 (*contiones* and political oratory); Mouritsen 2001 (*contiones* and *comitia*); 2013 (*contiones*); Feig Vishnia 2012 (election and electoral *comitia*); Jehne 2013 (*contiones* and political oratory); Russell 2013 (*contiones* and political oratory); Tan 2013 (*contiones* and political oratory).

<sup>14</sup> E.g. Ryan 1998 (the senate); Brennan 2000 (the praetorship); the contributions to the volume edited by Beck, Duplá, Jehne and Pina Polo 2011; Pina Polo 2011 (the consulate).

<sup>15</sup> For a concise and particularly penetrating discussion of the application of the concept of political culture to the Roman Republic, see Hölkeskamp 2010: 53-75; cf. 2004: 7-9. On rhetoric and political oratory, see e.g. Pina Polo 1996; Millar 1998; Hölkeskamp 2004: 219-56; Morstein-Marx 2004; Sumi 2005: 74-96; David 2010; the contributions to the volumes edited by Smith and Covino 2011 and Steel and van der Blom 2013; Mouritsen 2017: 72-94. On the creation of political consensus, legitimacy, and collective identity through entrenched cultural expectations and values, rituals, symbols, and language, see e.g. Flaig 2004; Sumi 2005: 16-46 and *passim*; Flower 1996; 2014, esp. 393-6, 397-8; Hölkeskamp 2004: 137-98 and *passim*; 2010: 98-124; 2010a; 2011; 2013; Patterson 2010: 346-50; Morstein-Marx 2011; Russell 2013.

<sup>16</sup> On the limits of active political participation, see Mouritsen 2001: 18-37.

on the character of politics in the *res publica* as Livy conceived it.<sup>17</sup> But the focus of recent research lies where it did when Machiavelli's *Discorsi* were published five hundred years ago: very much on the first ten books of the *AUC*.<sup>18</sup> For example, perhaps the best of the new volumes on politics in the *AUC*, Ann Vasaly's *Livy's Political Philosophy: Power and Personality in Early Rome* (2015) concentrates entirely on the first pentad. This focus is not hard to understand, especially from the perspective of someone interested in what Livy has to say about politics. The first decade, and the first five books on the *libera res publica* in particular, fairly brim with politics; the later books, in contrast, are more focused on external affairs, and few of the political episodes that occur in them are as intense as those in the earlier books.

That the content of Books 21-45 is less overtly political than that of Books 1-10 is undeniable, and there is a reason for this. Livy's earlier books recount the development of the Roman political order, and, as Machiavelli recognised, that development provoked repeated bouts of *discordia*. The term and its cognates occur vastly more often in the first ten books than they do in the rest: thirty-five times, all connected with Roman internal affairs, in the Books 2-5 alone,<sup>19</sup> with only half that number of occurrences in Books 21-45, most relating to strife in foreign polities.<sup>20</sup> Insofar as politics plays a more obvious rôle at moments of turmoil, the early books are more political than the later ones. Internal affairs are simply more settled in the years covered by the third, fourth, and fifth decades of the *AUC*.

These decades appear to correspond to a period of optimum internal stability at Rome. Other historians of Rome, most obviously Sallust, regarded the age that encompassed the Second Punic War as a golden age of political harmony, *concordia maxuma* to borrow his term for it (Sall. *Cat.* 9.1),<sup>21</sup> and Livy appears to have shared this view. Indeed, there is evidence in the text that Livy even downplayed certain

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<sup>17</sup> N.B. Jaeger 1997; Chaplin 2000; Pittenger 2008; Haimson Lushkov 2015; Vasaly 2015. To this literary studies may be added two political theoretical studies: Hammer 2008: 78-131; Kapust 2011: 81-110.

<sup>18</sup> E.g. Miles 1995; Forsythe 1999; Vasaly 2015. This imbalance of interest is evident from the relative space dedicated to the first decade and the rest of Livy's work in the recent *Companion to Livy* (Mineo ed. 2014): eight chapters on Books 1-10, four on Books 21-45. Pittenger 2008: 7-9 reflects on the neglect of the later books and discusses its causes.

<sup>19</sup> 2.1.6; 2.24.1; 2.25.1; 2.29.8; 2.31.10; 2.34.1; 2.39.6; 2.42.3; 2.43.1; 2.44.7; 2.45.3; 2.54.2; 2.57.2; 2.60.4; 2.63.1; 3.17.12; 3.19.5; 3.38.3; 3.40.10; 3.65.6; 3.66.2; 3.67.6; 4.2.12; 4.26.6, 7; 2.32.2; 4.43.3; 4.46.4; 4.47.8; 4.48.14; 4.52.8; 4.56.11; 4.58.2; 5.1.3; 5.17.10.

<sup>20</sup> 22.41.5; 22.44.5; 23.35.7; 24.22.2; 26.41.20; 26.41.22; 28.20.10; 33.48.11; 34.49.10; 34.62.1; 40.7.7; 40.8.11, 16; 42.2.2; 42.4.5; 42.5.11.

<sup>21</sup> See Sall. *Cat.* 10.1; *Iug.* 42.2-5; *Hist.* 1.11 Maur.

moments of political disharmony in order to preserve the overarching sense of *concordia* that these books convey.<sup>22</sup> Livy could well have turned the incident of Q. Pleminius' plot to set fire to the city and escape from his prison into something more Sallustian, but instead he passes over it quickly (32.44.7-8).<sup>23</sup> For it is obvious that despite the lesson Machiavelli took from his work, Livy himself did not depict *discordia* as something positive.<sup>24</sup> It is *concordia*, not its antithesis, that is the basis of good government in the *AUC*, and Books 21-45 appear to recount the time of greatest *concordia* at Rome.<sup>25</sup>

And yet, as this thesis will demonstrate, although *discordia* is not as prominent a feature of the *res publica* in the later of Livy's extant books, it is not completely absent. And small wonder, for the *AUC*, composed in an age of *discordia*, was directed at an audience that would have been all too aware of where Livy's narrative was headed, even as he described the apogee of Rome's fortunes at the end of the Hannibalic War. This thesis explores Livy's depiction of politics in Books 21-45, with a particular focus on political strife, its sources, and the ways in which it was mitigated at this point of *concordia maxuma* in his narrative.

The first chapter reconsiders the character of the *AUC* by re-evaluating the context in which it was composed. It addresses the old fallacy that Livy was apolitical, and also discusses whether, as many scholars have imagined, Livy was enamoured of Caesar Augustus' new political order, and to what extent the *AUC* is 'Augustan' or 'Republican' in outlook.

The second, third, and fourth chapters investigate three key aspects of politics in Livy: the magistrates and other *principes*, the tribunes of the plebs, and the part played by oratory in conducting politics and negotiating conflict. Chapter 2 considers what the basis of *concordia* is in Books 21-45. Chapter 3 examines the causes of *discordia* and discusses how it was confronted, and how successfully, by the political leaders of the state. Together these chapters show that, although there is no shortage of political conflict in the third to fifth decades, collectively the pillars of the Roman

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<sup>22</sup> Mouritsen 2017: 109-11.

<sup>23</sup> Mouritsen 2017: 109.

<sup>24</sup> Kapust 2011: 82-3. On the 'felt meanings' Machiavelli recovered by reading Livy, see Hammer 2008: 78-131. Vasaly, however, argues that Machiavelli is correct that (some of) the *discordia* in Livy's early books is constructive, insofar as it leads to the redress of the plebeians' legitimate grievances, which in turn promotes the *concordia* of the state in the long term.

<sup>25</sup> On *concordia* in Livy's political thought, see Kapust 2011: 81-110.

state are generally able to suppress the forces of discord before they disturb the polity too much.

The final chapter, however, shows that there are hints that more severe political discord lies ahead in the *AUC*, by considering first the changing nature of leadership and the dangers associated with it, and secondly the capacity of unrestrained oratory to disrupt public harmony and endanger the state. This thesis therefore demonstrates that although Books 21-45 probably represent the most settled period in Livy's history, there is no absence of politics and political conflict in them; *concordia* had eclipsed *discordia*, but had not erased it altogether.

# **Chapter 1**

## ***Ab urbe condita*: Context and Conception**

### **Introduction**

Livy's supposed lack of either interest in or insight into political history is typically attributed to the author's personal background: to his origins, to his lack of involvement in contemporary politics, and to the political climate in which he wrote. The first part of this chapter (1.1 and 1.2) reviews the arguments that have been put forward based on these premises. It shows that on closer examination the evidence does not preclude the possibility that Livy was politically engaged, contrary to what is usually argued. The second part of the chapter (1.3 and 1.4) adopts a more expansive approach to understanding the background of the *Ab urbe condita*, encompassing the historical and literary milieu in which it was conceived and begun. In section 1.4, the aims of the *AUC*, especially as revealed by its *praefatio*, are considered, and it is argued that Livy's great project was a response to the political upheaval of the late Republic, intended to address the problem of *discordia*.

### **1.1 An apolitical historian?**

Titus Livius, whose life is traditionally dated 59 B.C.-A.D. 17, was a native of Patavium in the Transpadane region of what was still at the time of his birth the province of Gallia Cisalpina.<sup>26</sup> Culturally this region seems to have been largely 'Romanised' by the mid-first century, so it is safe to assume that despite being a provincial Livy grew up in a Roman milieu.<sup>27</sup> Modern scholars, however, have followed ancient authors in regarding the mores of the region as strict and old-fashioned, as yet uncorrupted by the decadence that afflicted the metropolis.<sup>28</sup>

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<sup>26</sup> Henceforth all dates are B.C. unless otherwise noted. Livy's dates: Badian 1993: 10-11 accepts the re-dating of M. Valerius Messalla's birth to 64 but rejects Syme's argument that Livy's life should be synchronised with Messalla's as baseless. Livy a native of Patavium: Asc. *Corn.* 68 Cl.; Mart. 1.61.3; Quint. *Inst.* 1.5.56. The province of Gallia Cisalpina was dissolved and incorporated into Italia in 42: App. *B Civ.* 5.3; cf. 3.30; 5.22; Cass. Dio 48.12.5; see Reid 1913: 125-126; Chilver 1941: 9-14; Brunt 1971: 166-67; Salmon 1982: 139.

<sup>27</sup> Mellor 1999: 48. On the 'Romanisation' of Gallia Transpadana, see Reid 1913: 115-16, 125-6, 146; Salmon 1982: 134, 202 n. 391.

<sup>28</sup> E.g. Chilver 1941: 216-18; Syme 1939: 465; 1959: 53; Walsh 1961: 1-2; Ogilvie 1965: 2; Galinsky 1996: 280; Mellor 1999: 48; Levick 2015: 25; Mineo 2015: xxxiii. Martial 11.16 implicitly associates



Politically, Patavium's reputed conservatism is widely believed to have translated into a stalwart 'republicanism', evidence of which has been found in that city's support for the 'republican' or 'senatorial' side in the War of Mutina in 43.<sup>29</sup> As a result Livy has been viewed as a provincial not only in origin but in outlook, the implication being that his perspective is not simply conservative but out-dated, naïve to the crude realities of contemporary Rome.<sup>30</sup> C. Asinius Pollio's reference to Livy's *Patauinitas* has been adduced to support this interpretation: although Quintilian understands Pollio's criticism as being directed at Livy's prose, various scholars consider it a comment on the Patavine's provincial perspective on life and politics.<sup>31</sup> Syme goes further, interpreting Pollio's remark as an attack on 'the whole moral and romantic view of history' that Livy represents.<sup>32</sup> Furthermore, Livy is generally believed not to have been a member the senatorial order, the political élite of the Republic, but rather is assumed to have belonged to the *equester ordo*.<sup>33</sup>

There is no direct evidence to support this assumption, but it is not an unreasonable one. Livy's contemporary Strabo had the impression that the historian's native city was home to more *equites Romani* than any other in Italy except Rome.<sup>34</sup> Livy's education, and his ability to pursue a career as an historian apparently without any other source of income or the financial help of a prominent literary patron, strongly suggests that he belonged to one of Patavium's many equestrian families. For scholars who regard politics as the exclusive pursuit of the senatorial order, Livy's provincial equestrian background explains his lack of interest in politics. Syme considers Livy a member of 'the pacific and non-political order in society', while in Ogilvie's assessment 'by nationality and upbringing Livy was predisposed to a narrow-minded and somewhat bourgeois detachment from the political struggles of

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Patavium with *grauitas* and rustic values; Plin. *Ep.* 1.14.3-4 calls the region that included Patavium the part of Italy that still retains its *antiqua uerecundia, frugalitas, and rusticitas*.

<sup>29</sup> Syme 1959: 53; Chilver 1941: 9, 217; Laistner 1947: 67; cf. Walsh 1961: 1-2; Usher 1985: 165. For Patavium's contribution to the war against M. Antonius in 43, see Cic. *Phil.* 12.10.

<sup>30</sup> E.g. Syme 1959: 51; cf. 37; Chilver 1941: 216-18; Carney 1959: 4; Ogilvie 1965: 5, followed by Ridley 1990: 133; Fantham 2013: 115; cf. Walsh 1961: 271-2; Mellor 1999: 48.

<sup>31</sup> Quint. *Inst.* 1.5.56; 8.1.3; Chilver 1941: 216-18; Carney 1959: 8-9 n. 41; Ogilvie 1965: 5; cf. the more cautious assessments of Fantham 2013: 114-15; Mineo 2015: xxxiii; and Mellor 1999: 62, who accepts that *Patauinitas* could refer to both Livy's literary style or to 'his provincial moral rectitude', since 'For Pollio, both would go together.'

<sup>32</sup> Syme 1939: 485-6; followed by Scullard 1959: 248.

<sup>33</sup> This assumption is almost universal; cf. Syme 1959: 51: 'Livy belonged (it is tempting to assume) to the "better sort" at Patavium.'

<sup>34</sup> Strabo 5.1.7.

his time'; the historian's outlook is both 'provincial' and 'middle-class'.<sup>35</sup> Writing in the same vein, Mellor has recently suggested that the *AUC*, in view of Livy's background, reflects the 'moderately conservative political views and moral standards of the non-political classes of Italy' which 'preferred the political order, moral rectitude, and piety of the past to the corruption, demagoguery, rapid change, and civil war of the first century'.<sup>36</sup>

More significantly for many of his critics, Livy is not known to have held public office.<sup>37</sup> Traditionally, Roman historiography, both Republican and Imperial, is held to have been monopolised by writers with personal experience of politics.<sup>38</sup> Unlike many of his predecessors, from early historians such as Fabius Pictor and Cato the Elder to his contemporaries Sallust and Asinius Pollio, Livy appears never to have held a magistracy at Rome or sat in the Roman senate. As such, he is treated as something of an aberration among Roman historians; some commentators have even expressed surprise that Livy 'fail[ed] to enter politics'.<sup>39</sup> It is generally assumed that never having been a politician left Livy incapable of exploring the mechanics of Republican politics, even if he had been inclined to do so. Syme implies as much in *The Roman Revolution* by stressing the 'practical experience of affairs' that informed the work of Pollio, Sallust, and Tacitus, whose scorn for 'the academic historian' he highlights.<sup>40</sup> He is more directly critical of Livy's historical acumen in his subsequent article, asserting that without the benefit of a political career behind him the young Patavine 'began to write history without having learned how history is made'.<sup>41</sup> Walsh, too, takes it for granted that Livy's lack of 'personal experience' in Roman politics will have 'impaired his insight into the manipulation of political power'; he allows only that it is impossible to judge on the basis of the surviving books exactly how badly impaired the historian's perspective was.<sup>42</sup> And so too Ogilvie, for whom

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<sup>35</sup> Syme 1939: 465; cf. 1959: 74; Ogilvie 1965: 2, 5. Ogilvie's assessment of Livy as a representative of the apolitical Italian *bourgeoisie* is followed by Ridley 1990: 133 and echoed by Carney 1959: 8-9 n. 41, Galinsky 1996: 280, and Mellor 1999: 72.

<sup>36</sup> Mellor 1999: 48.

<sup>37</sup> This point is frequently emphasised: e.g. Syme 1959: 50, 75-6; Walsh 1961: ix, 163, 273; Ogilvie 1965: 24-5; Galinsky 1996: 280; Mellor 1999: 48-49; Mehl 2011: 100.

<sup>38</sup> E.g. Walsh 1961: ix; Syme 1959: 50, 75-6; Miles 1995: 48-9; Mehl 2001: 100.

<sup>39</sup> Mehl 2011: 100; cf. Ogilvie 1965: 24-5: 'The political ambition of the normal Roman appear never to have attracted him.'

<sup>40</sup> Tac. *Hist.* 1.1; Syme 1939: 485; cf. 4. Syme's preference for these three historians, and Pollio in particular, is obvious, e.g. vii, 4-5, 482-6.

<sup>41</sup> Syme 1959: 75-6.

<sup>42</sup> Walsh 1961: 163; cf. 167, 168.

Livy's 'ignorance of public business', the result of his political inexperience, 'is disclosed by almost every page of the history.'<sup>43</sup> It has become almost axiomatic that Livy's political inexperience limited his ability to penetrate Roman high politics; two recent surveys differ only in the degree to which they assume the historian's judgment to have been limited by his non-political career.<sup>44</sup>

In addition to Livy's background, the broader context in which he wrote, at the beginning of what would become the principate of Caesar Augustus, is held to have restricted the historian's engagement with Republican politics in a number of different ways. Chief among these is Livy's relationship with the new regime and with the princeps himself. The historian is widely regarded as a friend of Augustus.<sup>45</sup> A personal relationship between the two is inferred from Tacitus' version of a speech delivered by the historian A. Cremutius Cordus at his trial in A.D. 25:

'Titus Liuius, eloquentiae ac fidei praeclarus in primis, Cn. Pompeium tantis laudibus tulit, ut Pompeianum eum Augustus appellaret, neque id amicitiae eorum offecit (*Ann.* 4.34.3).'

'Titus Livius, distinguished among those foremost in eloquence and credibility, held Cn. Pompeius in such high esteem that Augustus called him a Pompeian; and this did not impede their friendship.'

Two further pieces of information are typically adduced to support the idea of a close connection between the Patavine and the princeps. The first is the author's digression on the status of A. Cornelius Cossus when he defeated an enemy in single combat and dedicated the *spolia opima* at the Temple of Jupiter Feretrius. Livy (4.20.5-11) writes that he had 'heard' (*audissem*) Augustus' report that during the latter's renovation of the temple he had discovered an inscription on Cossus' linen corslet, which indicated that Cossus had been consul when he dedicated the *spolia*, contrary to the literary tradition which made him a military tribune. The second is Suetonius' report (*Claud.* 41.1) that Claudius, in his youth, tried his hand at history 'with the encouragement of T. Livius' (*hortante T. Liuiio*). The latter passage is taken to reflect the historian's involvement with the imperial household, the former, more significantly, his direct

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<sup>43</sup> Ogilvie 1965: 24.

<sup>44</sup> Mellor 1999: 50: '[Livy's] work lacks some of the political acumen of a senator'; Mehl 2011: 104: 'One should never lose sight in all this that Livy's ability to assess military or political affairs neither derived from personal experience nor was acquired growing up as a member of Republican Rome's ruling class. Livy barely understood this intricacies of senatorial rule.'

<sup>45</sup> E.g. Syme 1939: 464; Scullard 1959: 247; Walsh 1961: 12, 18, 272; 1961a: 28; Ogilvie 1965: 2; Galinsky 1996: 286; Mellor 1999: 71; cf. Fantham 2013: 115.

contact with Augustus himself, since its phrasing (4.20.7: *hoc ego cum Augustum Caesarem...ingressum aedem Feretri Iouis...se ipsum in thorace linteo scriptum legisse audissem*) is assumed to mean that Livy was told about the testimony of the linen corslet by the emperor in person.<sup>46</sup>

The nature and significance of this alleged friendship between princeps and historian has been variously interpreted. Some commentators regard Livy as a member of the literary circle gathered around Augustus and his associates, employed by the imperial household in much the same way as Vergil and Horace.<sup>47</sup> *The Roman Revolution* treats Livy as ‘Augustus’ historian’, placing him alongside the aforementioned poets whose attachment to the regime is firmly attested.<sup>48</sup> This interpretation allows Syme to interpret Livy’s admiration for Cn. Pompeius Magnus not as evidence of Livy’s political independence and the first emperor’s forbearance, as Tacitus intends it, but as the historian reflecting the stance of the Augustan establishment. Syme argues that the positive depiction of Pompeius (and the corresponding criticism of C. Julius Caesar) reflects a general rehabilitation of the great commander’s reputation under the new regime, which sought to align itself with the ‘republican’ values of the losing side in the civil war of 49-45.<sup>49</sup> This view of Livy’s relationship with the principate obviously makes genuine, independent political insight on his part unlikely, and it has had some influence on modern scholarship. Howard H. Scullard follows Syme, locating Livy with Horace and Vergil in a literary circle devoted to extolling the virtues of the Augustan *res publica*.<sup>50</sup> Charles Norris Cochrane is perhaps also influenced by Syme, but takes the latter’s conclusions further by characterising the *AUC* as no less than ‘an effort to ‘sell’ the Augustan system’.<sup>51</sup>

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<sup>46</sup> For Suetonius’ note as evidence of Livy’s connections with the imperial household, see e.g. Scullard 1959: 247; Syme 1959: 66; Walsh 1961a: 28; Ogilvie 1965: 2; Woodman 1988: 138; Mellor 1999: 70; Mehl 2011: 100, cf. 103. For the Cossus passage as evidence of personal relations between Livy and Augustus, see e.g. Cichorius 1922: 261-3; Syme 1959: 43-4, 66; Ogilvie 1965: 3, 563-4; Galinsky 1996: 286; Fantham 2013: 115; cf. Foster’s translation of 4.20.7 for the Loeb edition (1922), which assumes direct contact between the two: ‘Having heard from the lips of Augustus Caesar...’.

<sup>47</sup> E.g. Scullard 1959: 244-8; Shotter 2005: 48-9; Mehl 2011: 100; Fantham 2013: 115.

<sup>48</sup> Livy as Augustus’ historian: Syme 1939: 464; cf. 317. The proximity of Livy and the poets to the Augustan regime: Syme 1939: 318, 464-5.

<sup>49</sup> Syme 1939: 317: ‘The Emperor and his historian understood each other’; cf. 464; 1959, 58. This interpretation is followed by Mehl 2011: 103.

<sup>50</sup> Scullard 1959: 247-8; Scullard 1959: 417 n. 1 cites Syme 1939 as a general reference for his chapter on Augustan culture.

<sup>51</sup> Cochrane 1940: 98-99; Cochrane 1940: vii expresses particular gratitude in his preface to Syme for his help, so it may reasonably be inferred that Syme’s own views on Livy, presented in *The Roman Revolution*, have influenced Cochrane’s.

Closer to the present, Elaine Fantham has described Livy's history as 'an authorized work' promoted by the regime, which in turn aimed at promoting 'the ideals that Augustus wanted to set before his people'.<sup>52</sup> By representing Livy as in effect an official spokesman for the new order, these authors follow Syme in stripping him of independent political attitudes.

Other commentators, however, have been more cautious about interpreting Livy as a court historian. There is no direct evidence that Livy enjoyed the patronage of the Augustan circle, as there is for Vergil, Horace and Propertius.<sup>53</sup> And more scholars have taken Tacitus' passage as it was intended, as simple proof of Livy's freedom of speech under Augustus, than have followed Syme's ingenious interpretation.<sup>54</sup> Livy's apologists argue that his *amicitia* with the emperor need not have curtailed his independence. Indeed, it has been argued that Livy, far from composing his history with the aim of pleasing his imperial *amicus*, only earned Augustus' *amicitia* after the publication of his early books. In this scenario, it was the writer who was courted by the emperor, rather than the writer who courted the emperor's favour; this interpretation permits Livy his authorial integrity in spite of his association with the princeps.<sup>55</sup> Evidence of the historian's independence has been found in his treatment of Augustus' claims about Cossus' consulate. Although Livy took the trouble to report the princeps' testimony in detail, he evidently did not think it outweighed his literary evidence because he did not rewrite his account to make Cossus a consul. He accorded Augustus the respect the latter's eminence merited without allowing that eminence to sway his historical judgement.<sup>56</sup> This suggests that echoes of Augustan ideology in the *AUC* do not necessarily indicate that its author

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<sup>52</sup> Fantham 2013: 115.

<sup>53</sup> Galinsky 1996: 286; cf. Syme 1959: 52; Mellor 1999: 70-71.

<sup>54</sup> E.g. Walsh 1961: 11-12; Ogilvie 1965: 2; Usher 1985: 166-7; Badian 1993: 25-6; Galinsky 1996: 286; Marincola 1997: 171-2. This is not to say that Syme's assessment of the mature Augustan establishment's attitudes towards Pompeius and Caesar is inaccurate. Galinsky 1996: 286 argues, however, that while it was safe to extol the former and to be somewhat critical of the latter, Livy may have earned his *Pompeianus* epithet by going beyond what was generally acceptable, particularly in his ambivalent treatment of Caesar (Sen. *QNat.* 5.18.4).

<sup>55</sup> See Carney 1959: 5; Walsh 1961: 12, cf. 18, 272; 1961a: 28; Ogilvie 1965: 3.

<sup>56</sup> Walsh 1961: 14-15; 1961a: 30; Ogilvie 1965: 3, cf. 564; Galinsky 1996: 286; Kraus 1997: 72; Forsythe 1999: 63-4; Mineo 2015: xxxv-xxxvii. Cf. Fantham 2013: 115, who uses the same material to support the opposite conclusion, offering it as evidence of Livy's dependence on Augustus' approval and support. Another example given as evidence of Livy's independence is the doubt he expresses over the conflicting traditions about the parentage of Ascanius/Iulus (1.3.1-3), which shows that he chose not to accept the claims of the *gens Iulia* without question: see Miles 1995: 38-40; Galinsky 1996: 286.

was intentionally promoting the new dispensation.<sup>57</sup> Few commentators have accepted Walsh's unconvincing proposal that these ideological parallels are the result of Livy's influence on the princeps, rather than the reverse.<sup>58</sup> Instead, rather than interpreting these parallels as the result of Livy's contact with Augustus, many scholars regard them as the product of a shared cultural and intellectual milieu that, in the wake of the ruinous internal conflicts of the late Republic, stressed the need for the revival of patriotism and a reversion to traditional morality.<sup>59</sup> Syme himself approached this position in his later work on Livy by recognising that the *AUC*'s attitudes towards 'religion, patriotism, and morality' might pre-date the Augustan settlement.<sup>60</sup> Because the regime assumed a patriotic, moral, and religious stance similar to his own, Livy can be presumed to have embraced the Augustan dispensation of his own accord, rather than in service to the princeps.<sup>61</sup>

Those who defend Livy's intellectual autonomy, however, generally have not associated this autonomy with an independent political outlook. On the contrary, the historian is depicted in some modern interpretations as acquiescing in the reconstituted *res publica* precisely because he lacked any political inclinations of his own. Once again, Livy's background is cited to justify this position. Syme describes the Augustan settlement as 'the victory of the non-political classes', which in his view included the equestrian order and Italian gentry to which Livy belonged.<sup>62</sup> With his 'bourgeois', municipal predilection for peace and the status quo, the historian is held to have welcomed the younger Caesar's rule because it suppressed the disruptive political contests that characterised the last decades of the Republic.<sup>63</sup> The principate created an environment in which Livy and the rest of his class could safely ignore high

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<sup>57</sup> Cf. Laistner 1947: 97; Kraus 1997: 72.

<sup>58</sup> Walsh 1961: 12-14, 18. Mellor 1999: 71 cautiously proposes that Livy's early books may have influenced Augustan policy, particularly the restoration of the temples and the revival of ancient religious rituals.

<sup>59</sup> E.g. Laistner 1947: 97-8; Walsh 1961: 10-11, 271-2; Levene 1993: 248 (on 'Augustan' religious themes in Livy specifically); Miles 1995: 109; Galinsky 1996: 280-2; Mellor 1999: 70-1; cf. Woodman 1988: 137.

<sup>60</sup> Syme 1959: 28.

<sup>61</sup> Carney 1959: 4; Walsh 1961: 10-14; 1961a: 31; Woodman 1988: 137-8; Mellor 1999: 71; cf. Syme 1959: 74, 75.

<sup>62</sup> Syme 1939: 513; followed by Carney 1959: 4; Galinsky 1996: 280.

<sup>63</sup> Syme 1939: 464-5; 1959: 74; Carney 1959: 4, 8 n. 41; Galinsky 1996: 280-1; Mellor 1999: 72. Walsh 1961a: 29 qualifies this position, arguing that Livy ('a true son of Patavium') supported the Augustan settlement only 'for so long as he believed that Augustus was striving to reinstate Senatorial government'.

politics.<sup>64</sup> Marincola stresses that as a product of this environment the *AUC* downplays the political significance of Roman history because neither its author nor its audience were politically active.<sup>65</sup> Other commentators have even detected evidence in his *praefatio* that Livy went beyond simply accepting Augustus' new dispensation. The historian's comment about the *remedia* to Rome's current troubles has been interpreted as a cryptic reference to Augustus' autocracy, or at least to the Augustan programme of moral revival, as the solution to the perennial strife of recent years.<sup>66</sup> An advocate of monarchy, however nuanced, is unlikely to have shown much interest in the Republican political system *per se*, except perhaps to illustrate how the chaos it had recently engendered made that monarchy necessary.<sup>67</sup>

Finally, it has occasionally been suggested the political climate under Augustus' principate discouraged Livy from expressing himself freely. As the historian is usually considered apolitical, this suggestion is not often given in explanation of the supposed absence of politics in his extant work, although it is sometimes presumed to have had an impact on his depiction of more recent and contemporary history in his lost books. Nevertheless, the evidence for restrictions on free speech during the time of the *AUC*'s composition is worth reviewing since it could be imagined to have influenced Livy's his earlier work, too. The clearest evidence of censorship under Augustus dates to the last decade of his reign. The books of T. Labienus were condemned and burnt by senatorial decree, as were those of Cassius Severus; the former committed suicide while the latter, because of the enmity he had incurred by his invectives, was exiled by the senate.<sup>68</sup> Of Labienus the elder Seneca writes that even under the *pax Augusta* he had not yet relinquished his 'Pompeian passions'.<sup>69</sup> Livy's Pompeian tendencies may not have alienated him from the princeps, but it would appear from Seneca's observation that there were limits to the regime's

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<sup>64</sup> Marincola 1997: 29.

<sup>65</sup> Marincola 1997: 29; cf. Mellor 1999: 48.

<sup>66</sup> *praef.* 9; Syme 1959: 42-3, cf. 74; Galinsky 1996: 281-2; Duff 2003: 85; Moles 2009: 69-75, 81-2; Fantham 2013: 115. Mellor 1999: 71-2 admits the possibility that *remedia* refers to the rule of Augustus, but also expresses scepticism about this interpretation. Woodman 1988: 134-5 accepts that *praef.* 9 pertains to 'the prospect of dictatorship which alone would end the war' but, dating it to before the Battle of Actium in 31, implies that it does not necessarily pertain to the future princeps.

<sup>67</sup> Cf. Moles 2009: 82.

<sup>68</sup> T. Labienus: Sen. *Controv.* 10 *praef.* 5, 7-8; Suet. *Calig.* 16.1; Cassius Severus: Suet. *Calig.* 16.1; Tac. *Ann.* 1.72; 4.21. Cassius Dio 56.27.1 places the book-burnings in A.D. 12

<sup>69</sup> Sen. *Controv.* 10 *praef.* 5: *animus...qui Pompeianos spiritus nondum in tanta pace posuisset* ('his spirit...had not yet laid to rest its Pompeian passions, even under so firm a peace').

tolerance of contrary positions.<sup>70</sup> Livy's project must have been largely complete by the time of these persecutions, but it is precisely the later sections of his history, recounting the rise to power of Caesar Augustus, that were the most politically sensitive. The superscription to the *Periocha* of Book 121, *qui editus post excessum Augusti dicitur*, has been considered significant in this regard. Since Livy cannot possibly have written twenty-one books in the three years between the first emperor's death and his own, the superscription must mean that these books were only published after A.D. 14, with most being composed before that.<sup>71</sup> The delay in the publication of Books 121-142, which chronicle the years from the Triumvirate to the death of Drusus, has been interpreted as Livy's cautious response to the dangers of writing too freely about Augustus' early career.<sup>72</sup> Syme and Mellor, however, doubt that Livy was in any danger, attributing Livy's decision to withhold his last books to tact rather than fear.<sup>73</sup> Syme also interprets the focus on foreign campaigns at the expense of domestic affairs in *Periochae* 134-142, which cover the years 29-9, as at least partially motivated by Livy's desire to 'avoid awkward topics' such as the conspiracy of Varro Murena in 23, and the struggles over succession.<sup>74</sup>

The composition of these last books and the attacks on outspoken figures occurred towards the end of Augustus' life, but some authors have postulated that Livy would not have felt free to express potentially controversial views even at the beginning of the emperor's reign. Mehl, for example, points to Horace's description of Pollio's history as *periculosae plenum opus aleae* ('a labour full of dangerous risk') as evidence of the dangers attendant on writing about the civil wars even during the 20s.<sup>75</sup> Similarly, Miles argues that 'though Labienus and Cassius had not suffered their unprecedented fates, that did not mean those fates would have been unimaginable when Livy began the composition of his own history some forty years earlier.'<sup>76</sup> He

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<sup>70</sup> Cf. Badian 1993: 27, 37 n. 57.

<sup>71</sup> Syme 1959: 38-40; followed by Badian 1993: 23-5; Mehl 2011: 102-3.

<sup>72</sup> Mehl 2011: 103; Badian 1993: 27-8.

<sup>73</sup> Syme 1959: 72 suggests that Livy may have withheld these books out of consideration for those who had been subject to censorship, and perhaps also to avoid embellishing Augustus' speeches while the princeps still lived. Mellor 1999: 72 thinks that Livy was motivated more by a general sense of *pietas* towards the emperor.

<sup>74</sup> Laistner 1947: 79; Syme 1959: 67, 68-9, 69-71, also arguing that Livy chose to end his history in 9 to avoid recounting politically sensitive matters in the years that followed, such as the difficulties of securing the succession and the defeat in the Teutoburg Forest.

<sup>75</sup> Hor. *Carm.* 2.1.6-8; Mehl 2011: 103.

<sup>76</sup> Miles 1995: 49-51.



stresses that when Livy started writing he could not know how the fledgling principate would treat dissenting or contrary views.<sup>77</sup> Livy's awareness of the potential dangers of engaging too directly in politically sensitive matters explains, in Miles' view, his tentative and often ambiguous treatment of conflicting historical traditions. This is interpreted as a response to Augustus' efforts to monopolise Roman history to serve his own political agenda, a way of confronting and challenging the regime's attempt to control Rome's historical narrative without doing so too explicitly.<sup>78</sup> Thus, Livy's treatment of Roman history was constrained by 'the necessity of political tact'.<sup>79</sup>

This is not a widely-held view, since for the reasons outlined above Livy is usually assumed not to have had much to say about politics anyway. Other historians had written in part to convey practical lessons based on (or at least justified by) their own political experience to other members of the governing élite. In contrast, as a provincial with little interest in or experience of politics Livy is not imagined to have intended his work to be politically instructive. Instead, he used history to extol the virtues and the resulting accomplishments of the *maiores*, in an effort to counteract the moral decay about which he and his contemporaries were so concerned.<sup>80</sup> This moral instruction was directed not primarily to the political class but to a broader audience, for many members of which politics would have mattered little, especially as the supremacy of Augustus had now rendered traditional politics obsolete.<sup>81</sup> Of course, the nature of his subject meant that Livy could not ignore politics altogether, but his depiction of political matters is typically characterised as naïve or simplistic, as befits its author. Livy is blind to the corruption of the Republican political system, and so he idealises the ancient Roman state.<sup>82</sup> His native conservatism results in a laudatory and uncritical portrait of the senate and its leadership, which is matched by a generally negative presentation of the *populus* and populist politicians.<sup>83</sup> Livy's understanding of senatorial politics, too, is overly simplistic and idealised because, not being a senator, he is considered ignorant of the complex internal dynamics of the

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<sup>77</sup> Miles 1995: 49-51, 223-4; cf. 51 n. 58: 'Clearly, the new political order had created a new environment in which historians...could no longer be certain that the liberality accorded freedom of speech in the late Republic continued to apply.'

<sup>78</sup> Miles 1995: 38-54.

<sup>79</sup> Miles 1995: 224.

<sup>80</sup> Syme 1959: 56; Walsh 1961: 66, 93; 1961a: 29; 1982: 1065-6, 1069; Marincola 1997: 29.

<sup>81</sup> Syme 1959: 75; Marincola 1997: 29; cf. Mellor 1999: 48.

<sup>82</sup> Carney 1959, 8 n. 41; Walsh 1961a: 29; 1982: 1064.

<sup>83</sup> Walsh 1961: 166-7; 1961a: 29; Mehl 2011: 104; cf. Mellor 1999: 48.

Roman senate and its dealings with other powerful groups.<sup>84</sup> While it is admitted that the historian does occasionally show an awareness of the complexities at the heart of politics (such as the rôle of social and economic factors in the ‘Struggles of the Orders’), his interest in these matters is attributed to his interest in character and its moral significance: in Walsh’s words, Livy’s ‘interest is primarily in personalities, not in policies’.<sup>85</sup> The man from Patavium, disconnected from the hard realities of political life at Rome, a member of the ‘bourgeoisie’ who like the rest of his class wanted nothing more than to enjoy the peace that the rule of Caesar Augustus offered, is simply not expected to have devoted his energies to explicating politics.

## **1.2 An apolitical historian: the evidence reconsidered**

This interpretation of the influence of Livy’s origins and historical context on his attitude to politics is not as sound as it might appear. Under closer scrutiny many of the premises on which it is based prove either incorrect or overly reliant on questionable assumptions. Furthermore, some of the key arguments that Livy was apolitical take for granted a view of Roman politics that is too limited in its conception, and hence does not reflect the range or nature of what the historian and his contemporaries are likely to have considered political matters. By critically examining the arguments outlined above, this section will demonstrate that nothing in Livy’s background precludes him from having been conscious of politics.

The idea that Livy’s origins and social position left him uninformed about and disinterested in politics is problematic in a number of ways. The common argument that the historian’s alleged innocence of Roman politics stemmed from his Patavine roots is especially dubious. By the late first century A.D. the region that included Patavium may well have been associated with *grauitas* and *rusticitas*, if the comments of Martial and Pliny the Younger are accepted as representative.<sup>86</sup> There is little reason, however, to assume that this association dates back to Livy’s time, and still less to credit it with any accuracy. Metropolitan Romans displayed a tendency to stereotype people from the more remote and rural regions of Italy as moral, old-fashioned, and untainted by the decadence of urban life, but as with any social and

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<sup>84</sup> Mehl 2011: 104; Walsh 1961: 165-8.

<sup>85</sup> Walsh 1961: 69-70; cf. 163-4; 1961a: 32; 1982: 1065-6.

<sup>86</sup> Mart. 11.16; Plin. *Ep.* 1.14.6.

ethnic stereotype this ought to be treated with utmost suspicion in the absence of corroborating evidence.<sup>87</sup> Patavium's opposition to M. Antonius in the War of Mutina has been presented by modern commentators as a reflection of the city's 'republicanism', and Cicero certainly represents Patavine participation as an exemplary display of loyalty to the senate.<sup>88</sup> Cicero's rhetoric, however, is hardly unbiased; he may have presented the war as a straightforward conflict between the forces of the *res publica* and tyranny, but this need not reflect the Patavines' view or their reasons for taking up arms against Antonius. Thus there is no hard contemporary proof that Patavium was old-fashioned in its morals and tastes during Livy's lifetime. If the assumption that his community was a bastion of rustic conservatism is abandoned, it makes no sense to interpret Asinius Pollio's criticism of Livy's *Patauinitas* as a reference to provincial naïvety in the latter's approach to history.<sup>89</sup> *Patauinitas* is better understood as an example of Pollio's famously pedantic attitude to grammar, directed at certain regional idiosyncracies in Livy's prose, though its exact significance will probably remain as perplexing to modern readers as it was to Quintillian.<sup>90</sup> But it is unreasonable to imagine that Livy was unacquainted with the realities of contemporary politics simply because he came from Patavium.

The same can be said of the idea that Livy would have been uninterested in politics because of his social class. This argument is based on the misconception that the *equester ordo*, and especially its municipal element to which Livy probably belonged, was a non-political class. In discussions about the historian, scholars have often treated this order as a kind of pre-modern middle class, preoccupied not with politics *per se* but with the more 'bourgeois' concerns of material security and

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<sup>87</sup> Dench 1995: 67-8, 107-8. This stereotyping phenomenon and its impact on the depiction of the Sabines is examined in detail by Dench 1995: 85-94, who notes that with the incorporation of the Sabines into the Roman polity 'Sabine distinctness comes to embody all the positive aspects of being outside the corrupt city of Rome, seat of empire'. Cf. similar stereotyping of *noui homines* as old-fashioned, moral and innocent of Roman corruption, e.g. Sall. *Iug.* 85 about Marius; Tac. *Ann.* 3.55 and 16.5 about municipal and provincial senators under Vespasian and Nero respectively; Wiseman 1971: 113; Dench 1995: 107-8.

<sup>88</sup> Cic. *Phil.* 12.10.

<sup>89</sup> It could be argued that Pollio's criticism reflects the kind of stereotype discussed above, but, again, there is no evidence that this stereotyping had yet been directed to the communities of Gallia Transpadana, which had only recently been incorporated into the Roman polity as citizens. Furthermore, as a product of a municipal community himself, Pollio is perhaps unlikely to have embraced the prejudices of metropolitan Rome.

<sup>90</sup> MacKay 1943: 44-5; Walsh 1961: 269-70; Bosworth 1972: 446; Mehl 2011: 95; Levick 2015: 34. Cf. Pollio's trivial criticism of Sallust's prose: Gell. *NA* 10.26; Suet. *Gram. et rhet.* 10.1-4; Bosworth 1972: 446.

traditional morality. Livy, with his interest in morals and political harmony, has been seen as the ‘consummate representative’ of this non-political class.<sup>91</sup> The identification of the equestrian order as a commercial middle class, however, has long been recognised as misleading.<sup>92</sup> The *equites* of the first century are more correctly understood as the upper class of Roman Italy, that is, the same social and economic class as the senators.<sup>93</sup> Although many equestrians engaged in commercial activity, as state contractors (*publicani*) or as general businessmen (*negotiatores*), the equestrian order was not primarily a commercial class.<sup>94</sup> The economy of Roman Italy was overwhelmingly agricultural, and in such an economy most wealth necessarily derives from ownership of land. In other words, the wealthy equestrian order, like the senatorial order, was a predominantly land-owning class: the majority of *equites* probably did not invest in commerce or public contracts, while most of those who did so derived their capital from landed property.<sup>95</sup> As its economic foundations were identical to those of its senatorial counterpart, the *ordo equester* is unlikely to have evolved a distinct ‘bourgeois’ ideology. The occasional clashes between the commercially active *publicani* and the senate should not obscure the fact that the two orders had broadly concurrent financial interests based on landed property.<sup>96</sup> This is evident in equestrian opposition to agrarian laws, which also illustrates one way in which the *equites* could become actively involved in politics.<sup>97</sup> So, while it is true that when the *equites* did become involved in politics they were often motivated by their own material interests, these interests were not always related to publican activity or commerce, or necessarily discrepant from those of the senate (and the *ordo equester*

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<sup>91</sup> Galinsky 1996: 280; cf. Ogilvie 1965: 2; Mellor 1999: 72.

<sup>92</sup> N.B. the objections to the use of the term ‘middle class’, with its modern socio-economic connotations, raised in reviews of Hill’s *The Roman Middle Class in the Republican Period* (1952): Balsdon 1954: 148-9; Scullard 1955: 181-2. Cf. Brunt 1988: 162.

<sup>93</sup> See Brunt 1988, esp. 146-7, 193. Beyond the formal distinction conferred by a seat in the senate, there does not seem to have been any formal distinction between the two orders until the introduction of a separate senatorial census by Caesar Augustus: see Nicolet 1976: 20-30 and *passim*; Brunt 1988: 146. The division between the orders was blurred by the fact that a large proportion of senators must have come from equestrian backgrounds rather than established senatorial families, especially after Sulla increased the membership of the senate to six hundred; furthermore, the wealthiest and most prestigious equestrian families shared the same ‘social milieu’ as their senatorial counterparts: see Brunt 1988: 146-7.

<sup>94</sup> For the identity and activities of the *publicani* and the *negotiatores*, see Brunt 1988: 162-73.

<sup>95</sup> See Brunt 1971a: 70; 1988: 162-4; cf. Broughton 1955: 276.

<sup>96</sup> Brunt 1971a: 73. For a critical analysis of the idea of a protracted conflict between the senate and *equites* over the latter’s business activities, see Brunt 1988: 162-92.

<sup>97</sup> Brunt 1988: 147-8.

hardly had a monopoly on material motives for engaging in politics, particularly when property rights were involved).

The *equites* also had more in common ideologically with the senators than their need to maintain security of tenure. It must also be borne in mind that the greater part of the equestrian order, certainly after the enfranchisement of Italy after the Social War, probably comprised the *domi nobiles* of the *municipia*.<sup>98</sup> As their name suggests, these municipal *equites* constituted local aristocracies; despite the limited rôle they played in the affairs of the Roman state, as the governing élite of their own small polities their attitude towards politics is likely to have been every bit as aristocratic as that of the great *nobiles* of Rome.<sup>99</sup> Any doubts about this are dispelled by a cursory reflection on the attitudes and instincts of Cicero, which despite their municipal equestrian origins can hardly be described as bourgeois. Unlike Cicero, most municipal *equites* appear to have limited whatever political aspirations they had to local government. Others will have had no ambitions beyond maintaining their estates, satisfied with the wealth and status those farms conferred. Nevertheless, these *equites*' aristocratic ethos was evidently as developed as that of those citizens with grander ambitions, and their sense of *dignitas* drew them into political contests at Rome.<sup>100</sup> The political significance of the equestrian order's collective sense of pride during the first century can be seen in such examples as the *lex Roscia* of 69 granting *equites* designated seating at the circus, and, later, by Augustus' grant of the right to adorn their tunics with purple *angusti clavi*. Both cases reflect the desire of the order for recognition of its status, its *splendor*, and senatorial politicians' recognition of the value of equestrian support. The most notable example of the impact of the collective pride of the equestrians is the protracted conflict over the composition of the juries for the permanent *quaestiones*: P. A. Brunt's analysis of this conflict indicates that it was motivated by the equestrian sense of entitlement, rather than by publican desire to control the courts as a weapon to use against hostile senators as has often been imagined.<sup>101</sup> The political involvement of the non-senatorial upper class was therefore not restricted to the pursuit of their private material interests. Admittedly, the majority

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<sup>98</sup> Brunt 1988, 164.

<sup>99</sup> Cf. Brunt 1988: 146-7 on the common ideology and pursuits of the *domi nobiles* and the senatorial aristocracy.

<sup>100</sup> Brunt 1988: 145: 'Consideration of *dignitas* were doubtless no more alien to the mentality of the [*equites Romani*] than of the [senators]'; cf. 192.

<sup>101</sup> Brunt 1988: 144-5, 150-62, 192.

of *equites*, particularly those who, like Livy, lived many days' journey from Rome, probably played a very limited rôle in the affairs of the *res publica*.<sup>102</sup> It is also likely true, as Brunt suggests, that few *equites* would have been willing to risk civil war in defence of the *res publica* against one or the other of the dynasts of the 40s or 30s.<sup>103</sup> But in the case of the equestrian order limited political activity should not be equated with political antipathy. As a member of a class with substantial material interests and a strong sense of its standing in society, Livy should not be assumed to have been apolitical because of his social background. Nor should it be imagined that the economic and social circumstances of the senatorial élite were 'Especially alien' to Livy, as Mehl claims, since his own equestrian circumstances were probably not radically different.<sup>104</sup>

A related argument, that Livy could not have understood Roman politics because he had no personal experience of politics as a senator, is even more problematic. Modern exponents of this argument appear to have adopted Polybius' view, that historians without any personal experience of politics are not qualified to write political history.<sup>105</sup> Roman historians who had pursued political careers may well have agreed with the Megalopolitan in this matter, but his premise was not universally accepted.<sup>106</sup> Modern scholarship tends to exaggerate the extent to which Roman historiography was monopolised by men with political experience, for several of Livy's more eminent predecessors, including L. Coelius Antipater, Q. Claudius Quadrigarius, Valerius Antias, Aelius Tubero and Sempronius Asellio, do not appear to have pursued political careers.<sup>107</sup> Livy's background was not as unusual for an historian as it is often suggested. This is not to say that Livy would not have had less insight into some of the practicalities of politics than an experienced and active

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<sup>102</sup> Brunt 1988: 164 suggests that the political rôle of the 'municipal gentry' was largely restricted to voting in the *comitia centuriata*.

<sup>103</sup> Brunt 1988: 161-2, 192.

<sup>104</sup> Mehl 2011: 104.

<sup>105</sup> Polyb. 12.25e-28a; Walsh 1961: 163, 168 explicitly follows Polybius' criteria in his appraisal of Livy as an historian. See Levene 2011: 278-80 for criticism of the tendency of modern writers to accept this ancient prejudice.

<sup>106</sup> Tacitus (*Hist.* 1.1.1) attributes the decline in the quality of historiography after the establishment of the principate in part to writers' *inscitia rei publicae ut alienae* ('ignorance of public and foreign affairs'); see Miles 1995: 49 n. 48.

<sup>107</sup> Miles 1995: 48 n. 47 provides a useful, if ironic, illustration of this tendency, listing these non-political historians only to stress that 'The writing of history remained the particular domain of men who held or had held political office at Rome.'

senator.<sup>108</sup> But it should not be assumed that an historian who had not been a politician would be wholly uninformed about politics nor incapable of acquainting himself with it.<sup>109</sup> The evidence taken from Livy's extant work to argue the opposite is not convincing. For instance, some have argued that an innocence of political reality is revealed by Livy's failure to relate the private interactions and manoeuvring of the senators.<sup>110</sup> In Walsh's judgement, the historian's 'ignorance of power politics makes him unaware of, or at any rate reticent about, the family alliances which sought to prolong their pre-dominance by control of elections.'<sup>111</sup> This argument relies heavily on an *a priori* conception of Roman politics, in which *gens*-based factions manipulated public affairs behind the façade of a republican constitution.<sup>112</sup> While widely accepted at the time when Walsh was writing, this conception of politics has since been refuted. There is no real evidence of the kind sustained alliances of *nobiles* that were extrapolated by Friedrich Münzer and H. H. Scullard, so the *AUC*'s silence on the matter is not a reflection of its author's naïvety. Admittedly much public policy must have been determined by the sort of personal negotiations reflected by Cicero's correspondence, but it is unfair to accuse Livy of ignorance for not relating this in his extant books. The historian was ultimately dependent on his sources for his information about political activity; if his sources did not provide accounts of this type of activity it is hardly reasonable to expect Livy to have done so. There is thus no firm basis for believing that simply because he had never been a politician Livy was incapable of comprehending politics.

The idea that Livy cannot have understood politics because he was not a senator is a reflection of the old tendency, discussed in the Introduction to this thesis, to treat Roman politics narrowly in terms of the interrelations of the aristocracy. This tendency has been superseded by a more expansive approach to politics in the Republic, in which the personal relations of the élite are understood to be only one

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<sup>108</sup> However, the figure of T. Pomponius Atticus, as he emerges from the Ciceronian epistles and from Cornelius Nepos' biography, serves as an admonishment against assuming that men outside of the senate were necessarily less familiar with the intricacies of senatorial politics. It is difficult to identify a politically better connected or better informed figure in the late Republic than the Epicurean who deliberately eschewed formal involvement in public affairs.

<sup>109</sup> Levene 2011: 286.

<sup>110</sup> Walsh 1961: 165-7; Mehl 2011: 104.

<sup>111</sup> Walsh 1961, 166.

<sup>112</sup> Walsh 1961: 165-7.

aspect of a broader, more open political culture.<sup>113</sup> In place of Syme's *arcana imperii*, many activities of the political élite are understood to have been performed in full view of the *populus Romanus*. Indeed, it was precisely this interactive relationship between the leadership of the Roman state and its citizenry that gave the leadership its legitimacy, regardless of whether the *populus*' rôle in this relationship is considered largely symbolic or whether it seen as genuine political participation.<sup>114</sup> On this understanding of Roman politics, the likelihood that Livy did not belong to the political élite need not be equated with his exclusion from political life.

This realisation has significant implications for understanding the influence of the Augustan regime on his work. If Livy is not regarded as having belonged to a naturally apolitical class, then it is unsafe to assume that he embraced the principate because it brought an end to politics (according to the narrow definition discussed above), or that because of this he composed an apolitical history for a similarly-minded audience. The historical context and its impact on Livy's historiography will be discussed in greater detail below, but for now it will suffice to point out that Augustus' settlement did not actually render politics irrelevant, certainly not during the years in which the existing sections of the *AUC* were written. As Syme points out, the rule of Augustus was not as secure in the decade after Actium as it is usually imagined. In these precarious years, when the memory of the civil wars was still fresh, neither Livy nor his audience are likely to have felt that they could safely ignore politics. The question of how free Livy was to express political views must therefore be addressed.

It has been shown that the most commonly cited obstacles to Livy's freedom of speech are censorship by the Augustan regime, and what Walsh described as 'a subtler form of censorship', the pressures of the emperor's friendship with and patronage of the historian.<sup>115</sup> The argument that from the beginning of his project Livy would have had to avoid expressing views at variance with the regime's official stance is easily dealt with. There is no reason to retroject the censorious atmosphere

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<sup>113</sup> For bibliography, see the footnotes under the relevant discussion in the Introduction.

<sup>114</sup> The classic case for genuine, effectively democratic participation by the *populus* is Millar 1998. Mouritsen 2017 presents arguments for viewing the participation of the *populus* as largely symbolic, a legitimising pretence employed by the ruling élite.

<sup>115</sup> Walsh 1961a: 28.



of Augustus' final decade to his first.<sup>116</sup> There are no recorded instances of censorship from the regime's early years, and Seneca explicitly states that the burning of T. Labienus' books was unprecedented, suggesting that he, at least, was unaware of any earlier cases.<sup>117</sup> Furthermore, it is not certain that the destruction of Labienus' writings represents an effort to stifle political dissent. Walsh points out that Seneca's account depicts Labienus as the victim of the private enmity he incurred by his indiscriminate verbal assaults, which had earned him the nickname *Rabienus*.<sup>118</sup> Labienus' personal *inimici*, not the Augustan state, are blamed for the suppression of his written works.<sup>119</sup> On the other hand, Cassius Dio and Tacitus attribute the suppression of certain works of literature, including those of Cassius Severus, to the princeps himself.<sup>120</sup> Both, however, indicate that this initiative was directed against defamation in written form, nowhere implying that there was any ulterior motive behind this.<sup>121</sup> It appears that Labienus, like Cassius Severus, was punished for his libellous invectives, not for his political opinions. Seneca's reference to Labienus' *Pompeiani spiritus* it therefore better understood as a reference to the *libertas* that characterised his oratory, which recalled an earlier, more liberal age, rather than to any anti-Augustan political tendencies.<sup>122</sup> The case for censorship under Augustus is unproven. The example of Cremutius Cordus provides a counter to any assumption that the first emperor would have been intolerant of contrary political positions. Cordus evidently felt secure

<sup>116</sup> Cf. Badian 1993: 27-8, arguing that the change from a liberal to a censorious atmosphere at Rome was a sudden occurrence in Augustus' final years.

<sup>117</sup> Sen. *Controv.* 10 *praef.* 5: *in hoc primum excogitata est noua poena...res noua et inusitata supplicium de studiis sumi* ('In this case a new penalty was first devised...a new and unheard-of business, to exact punishment from literature'); see Walsh 1961a: 28; cf. Badian 1993: 27. Cf. Tac. *Ann.* 1.72 on the condemnation of Cassius Severus, which claims that Augustus was the first person to apply the *lex maiestatis* to written libels.

<sup>118</sup> Sen. *Controv.* 10 *praef.* 5: *libertas tanta, ut libertatis nomen excederet, et, quia passim ordines hominesque laniabat Rabie<nu>s uocaretur* ('His freedom of speech was such that it surpassed the very name of freedom, and because he savaged all orders and men he was called "Rabienus"'); Walsh 1961a: 27-8.

<sup>119</sup> Sen. *Controv.* 10 *praef.* 5: *effectum est per inimicos ut omnes eius libri comburerentur* ('it happened though the efforts of his enemies that all his books were burnt'); Walsh 1961a: 27-8.

<sup>120</sup> Cass. Dio 56.27.1; Tac. *Ann.* 1.72.3. Naturally an initiative of Augustus would have been enacted through the senate: Suetonius (*Calig.* 16.1) refers to *senatus consulta* condemning the works of T. Labienus and Cassius Severus.

<sup>121</sup> Cass. Dio 56.27.1: *μαθὼν ὅτι βιβλία ἄττα ἐφ' ὕβρει τινῶν συγγράφοιτο, ζήτησιν αὐτῶν ἐποίησατο* ('learning that some books were being written attacking certain people, he conducted a search for them'); Tac. *Ann.* 1.72.3: *primus Augustus cognitionem de famosus libellis specie legis [maiestatis] eius tractauit, commotus Cassii Seueri libidine, qua uiros feminasque inlustres procacibus scriptis diffamauerat* ('Augustus was the first to take cognizance of slanderous pamphlets under this type of law, having been stirred to action by the obscenity of Cassius Severus, which had defamed distinguished men and women in his impudent writings'); see Walsh 1961a: 27-8.

<sup>122</sup> Sen. *Controv.* 10 *praef.* 5; cf. Badian 1993: 37 n. 57.

enough not only to praise Caesar's assassins but to do so in front of Caesar's heir; more seriously, he condemned those who conducted the proscriptions.<sup>123</sup> Even if a degree of anti-Caesarianism served the interests of a regime that presented itself as 'republican', as Syme posits, the emperor's rôle in the proscriptions must still have been a highly sensitive topic.<sup>124</sup> Yet Cordus suffered no repercussions because of his treatment of this subject under Augustus' reign. In all likelihood Livy enjoyed a similar degree of freedom. He was apparently unafraid of publishing a critical account of the last dictator, and like Cordus he felt free to broach the subject of the proscriptions.<sup>125</sup> As Livy dealt with this most controversial aspect of the younger Caesar's career in Book 120, it is unlikely that he delayed the publication of his subsequent books out of concern for affronting the princeps.<sup>126</sup> The political climate at Rome under Augustus does not seem to have given its historians reason for self-censorship.<sup>127</sup>

Livy's willingness to use his freedom of speech, however, is widely imagined to have been affected by his personal relations with the princeps. As the previous discussion showed, the significance of this purported *amicitia* has been interpreted in different, often contradictory ways. Some interpret *amicitia* as a client-patron relationship, making Livy a court historian whose writing reflects the official stance of the princeps who employed him. Others maintain Livy's independence, but propose that he would have avoided giving offence to his powerful friend. A few have even gone so far as to argue that it was Augustus who cultivated a friendship with the historian without exercising any significant influence over him at all.<sup>128</sup> Badian has demonstrated, however, that the premises of this purported *amicitia* are extremely weak.<sup>129</sup> The foremost piece of evidence, the reference to their *amicitia* in the speech

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<sup>123</sup> Cordus praises Brutus and Cassius with Augustus in his audience: Suet. *Tib.* 61.3; cf. Cass. Dio 57.24.2-3; Tac. *Ann.* 4.34; Cordus condemns the proscriptions: Sen. *Dial.* 6.26.1; see Walsh 1961a: 27.

<sup>124</sup> Badian 1993: 26 *contra* Syme doubts that Augustus would have actively encouraged the expression of 'republican' or anti-Caesarian sentiments, although he permitted them, because he drew his legitimacy from *Divus Iulius*.

<sup>125</sup> Livy's critical view of Caesar: Sen. *QNat.* 5.18.4; Galinsky 1996: 286. Proscriptions: Livy *Per.* 120; see Badian 1993: 26.

<sup>126</sup> Syme 1959: 38-9; Chaplin 2010: 464-5.

<sup>127</sup> *Contra* Miles 1995: 47-54, who argues that Livy adopted a deliberately ambiguous approach to Roman history in order to 'challenge his social and political superiors with a degree of safety'. Cf. Burton's 2000: 434 criticism of Miles' analysis of Livy's handling of the Cossus matter as 'an unnecessarily difficult reading'.

<sup>128</sup> Carney 1959: 4-5.

<sup>129</sup> Badian 1993: 11-16.

of Cremutius Cordus in Tacitus' *Annales*, is not an authentic quotation but a literary fabrication crafted to suit the historical setting.<sup>130</sup> The words Tacitus puts in Cremutius' mouth may indeed reflect an authentic tradition, that Augustus called Livy *Pompeianus* because of his laudatory depiction of Caesar's great rival, yet displayed no hostility towards the historian as a result.<sup>131</sup> But the absence of hostility between the writer and the princeps should not be equated with friendship or even close contact.<sup>132</sup> If a personal relationship between the two is not assumed from the outset, the other evidence for their contact becomes much less convincing. There is nothing in Livy's own account to suggest that he learned about Augustus' discovery of Cossus' corslet from the princeps himself. Instead he writes *hoc ego cum Augustum Caesarem...ingressum aedem Feretri Iouis...se ipsum in thorace linteo scriptum legisse audissem* (4.20.7); this would be an oddly periphrastic way of saying that the emperor told him about the corslet in person.<sup>133</sup> The verb *audissem*, in Latin as in English, more naturally indicates that Livy learned about Augustus' claims indirectly.<sup>134</sup> He may have 'heard' about the linen corslet at a public meeting, or from others who were aware of it, but his phrasing does not imply that he had any direct contact with Rome's ruler.<sup>135</sup> Thus, the only unambiguous evidence for Livy having contact with the imperial household is Suetonius' reference to the historian encouraging Claudius in his early efforts to write history. Yet Suetonius does not indicate that Livy was employed to train Claudius, or that he acted as the young man's mentor. Livy's contact with Claudius therefore appears to have been quite limited. It does not reflect a more extensive involvement with Augustus or his household.<sup>136</sup> In the absence of more concrete evidence of a close connection between the historian and

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<sup>130</sup> Badian 1993: 11.

<sup>131</sup> Badian 1993: 11-12; followed by Warrior 2006: 421.

<sup>132</sup> Citing Brunt's 1965 analysis of the range of meanings associated with *amicitia*, Badian 1993: 12 points out that even if Cremutius did apply the term to Livy's relationship with the emperor he may not intended it to convey a sense of actual friendship; Badian's argument is accepted by Warrior 2006: 421.

<sup>133</sup> Badian 1993: 14-15.

<sup>134</sup> Badian 1993: 14. Hence, 4.20.7 is probably more accurately translated: 'I have heard that Augustus Caesar...having entered the Temple of Jupiter Feretrius...read this [i.e. the inscription indicating that Cossus had been a consul] written on the linen corslet himself'; cf. Warrior's 2006 translation 'I have heard that Augustus Caesar...entered the temple of Jupiter Feretrius...and himself read the inscription on the linen breastplate.'

<sup>135</sup> Badian 1993: 14-16; Warrior 2006: 280 n. 55, 422-3; followed by Levick 2015: 32.

<sup>136</sup> Badian 1993: 12-13. Warrior 2005: 421-2 adds that even if Livy's contact with Claudius does indicate his involvement in imperial circles, as this occurred when Claudius was an *adulescens* (i.e. during Augustus' last decade), it does not suggest anything about the historian's relationship with the emperor during the early years of his project.

the princeps, there is no reason to believe that Livy would have tailored his history, in whatever way, to take into account the wishes of Augustus or his regime.

### **1.3 Reassessing Livy's background and the context of his work**

The preceding analysis argues that, contrary to what has often been assumed, Livy's social status and the political context in which he wrote do not make him particularly unlikely to have been politically-conscious or -informed. Nor, however, do they necessarily imply that he must have been. What follows is an attempt to go beyond these general considerations of Livy's origins and social status by assessing the impact of the specific circumstances of Livy's formative years on his attitude to politics. There is far too little information about the historian's life to attempt anything approaching a biographical sketch. Fortunately, the history of the first three decades in which he lived are among the best documented in antiquity. It is therefore possible to reconstruct the general conditions in which Livy grew up, and to imagine how these conditions might have influenced his outlook. The following section relies heavily on circumstantial evidence, so it must be admitted at the outset that its evaluations are largely hypothetical. Nevertheless, it will be argued that the impression of the formative influences of Livy's youth given below accords well with the general attitude to politics revealed by the *AUC*.

Livy was not born into a community of Roman citizens. Patavium was an ancient Venetian settlement that, along with other Transpadane cities that had not hitherto been Roman or Latin colonies, had been granted the *ius Latii* by the *lex Pompeia* of 89, and received full Roman citizenship only in 49.<sup>137</sup> No doubt some of Patavium's inhabitants were citizens before 49, however: the *lex Pompeia* enfranchised everyone who held a magistracy in the newly-created Latin colonies, so the political élite of Patavium would have been largely composed of Roman citizens.<sup>138</sup> If Livy belonged to a family of office-holders he would have inherited citizenship at birth. But even if his family were not part of the local ruling class they may still have been citizens. Livius is an old Roman *nomen*, which almost certainly

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<sup>137</sup> *lex Pompeia*: Asc. Pis. 3 Cl.; on its effects, see Chilver 1941: 7-8; Brunt 1971: 168; Salmon 1982: 134; Bispham 2007: 173-5. The grant of citizenship to the Transpadani in 49: Cass. Dio 41.36.3; cf. *FIRA* I 20.13 (*lex Roscia*); Brunt 1971: 168.

<sup>138</sup> Asc. Pis. 2-3 Cl.; see Chilver 1941: 7-8; Brunt 1971: 168 n. 4.

indicates that the historian's ancestors were settlers rather than indigenous Venetii.<sup>139</sup> From the late third century several Roman and Latin colonies were established in Gallia Cisalpina, and large territories had also been allocated through virginate distribution to Romans and Latins.<sup>140</sup> Livy's forebears may well have been citizens who had migrated to Patavium from one of the Roman colonies or from a part of the *ager Romanus*, or indeed from one of the recently enfranchised former Latin colonies, such as Aquileia.<sup>141</sup> Ultimately, however, it probably makes little difference whether Livy was a Roman citizen from birth or not. His cultural identity, so far as can be determined from his history, is entirely Roman, and as he spent his entire adult life as a citizen his political identity must have been entirely Roman too. Passing his childhood in a family of citizens rather than Latins would have made only a marginal difference to a boy in Patavium: at so great a distance from the *comitia* and the *Saepta* the local *ciues Romani* would rarely have exercised their franchise. But the same was true of most citizens in the Italian *municipia*, including the local *equites*. It has already been stressed that this lack of regular participation should not be equated with a complete detachment from politics among the upper classes of Italy. The citizens of Gallia Cisalpina were not so distant from Rome that their votes could be discounted, at least not in Cicero's estimation.<sup>142</sup> The non-citizens too (usually referred to as the Transpadani) involved themselves in politics to the extent that they agitated for the citizenship finally granted them in 49.<sup>143</sup>

Livy's childhood, then, would not have been spent in a political vacuum, but nor would he have been regularly exposed to the political affairs of the Roman *res*

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<sup>139</sup> T. Livius' lack of a *cognomen* is not uncommon for citizens in the outlying territories of Italy during the Augustan period: some twenty percent of freeborn males from contemporary Patavium lack *cognomina*: see Chilver 1941: 59, with the graph p. 62.

<sup>140</sup> On Roman and Latin settlement in Gallia Cisalpina, see Brunt 1971: 168, 190-8; Chilver 1941: 6-7.

<sup>141</sup> The Roman colonies of Mutina and Parma (founded in 183: Livy 39.55.5-9) were not very far from Patavium. Brunt 1971: 168 argues that all of the Gallic land allotted to Romans and Latins in the virginate distributions of 173 (Livy 43.1.5) had become *ager Romanus* by the first century; according to his interpretation of the *ius migrationis* Latins who settled on *ager Romanus* could have become Roman citizens (cf. Brunt 1965: 90). Thus there may well have been a sizeable population of Roman citizens in the Po Valley by the time of Livy's birth. Brunt (1971: 197) adds that 'Some degree of settlement after 173 is perhaps also required to explain the Romanization of the plain by the first century.'

<sup>142</sup> Cic. *Att.* 1.1.2: *uidetur in suffragiis multum posse Gallia* ('Gaul seems to carry much weight in the voting'); cf. Cic. *Phil.* 2.76; [Caes]. *BGall.* 8.50; see Brunt 1971: 168 n. 4.

<sup>143</sup> Cass. Dio 37.9.3; Cic. *Att.* 5.2.3; *Fam.* 8.1.2; Suet. *Iul.* 8; Brunt 1971: 168. Brunt (1972) notes that the term *Transpadani* must include the population of Livy's Venetia as well as the Gallic peoples north of the Po.

*publica*. Nevertheless, even discussions of political events overheard at home can have an impact on children.<sup>144</sup> But even if Livy had grown up in Rome, the impact of ‘normal’ politics would have been minimal compared to the defining events of his youth, the sequence of vicious civil wars initiated by Caesar’s invasion of Italy in 49. The significance of these continual conflicts on the reflective and conscientious mind that produced the *AUC* cannot be understated.<sup>145</sup> It is not known if Livy personally participated in the wars, but it is usually presumed that he did not, on the basis of his depiction of warfare. His war narratives have often been judged too unrealistic to have been produced by someone who had been on campaign or fought in battle.<sup>146</sup> This argument presupposes that Livy would have prioritised realism over his other literary aims if he had had any military experience.<sup>147</sup> But while the historian certainly aimed at general verisimilitude, it is self-evident that he composed his war narratives with other goals foremost in his mind. Livy’s descriptions of warfare are intended above all to be lucid and compelling, to give his audience a clear outline of the sequence of events that was also exciting and emotionally evocative.<sup>148</sup> This may indeed mean that the *AUC*’s depictions of warfare are unrealistic, but this has no bearing on whether its author had any personal experience of war.<sup>149</sup> There is a fair possibility that he did serve during the civil wars, however.<sup>150</sup> Depending on what year Livy’s birth is dated to, he would have been eligible for conscription either from 47 or (more likely) from

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<sup>144</sup> Levick 2015: 25.

<sup>145</sup> Cf. Levick 2015: 25.

<sup>146</sup> E.g. Walsh 1961: 4, 144, 157-163, 273; Mellor 1999: 48-9, 61; Mehl 2011: 100, 104; Mineo 2015: xxxiv; cf. Kraus 1997: 73. Walsh argues that Livy’s ignorance of warfare manifests itself in various mistakes, including certain ‘howlers’ in the historian’s translation from Polybius’ Greek (cf. 1958: 83-5). Koon 2010: 23-6 responds that these occasional errors hardly amount to a ‘crippling’ ignorance of military affairs; indeed, sometimes they represent an intentional alteration by Livy that reflects his thoughtful engagement with his sources.

<sup>147</sup> It also assumes, falsely, that any personal familiarity with battle would be readily apparent in an author’s writing: Ridley 1990: 133 n. 53.

<sup>148</sup> Koon 2010: 26-7 on Livy’s battles; Roth 2006: 59-60 on his sieges. Moreover, Livy’s descriptions of warfare were shaped by the expectations of genre and by the limitations of his sources (most of which must have offered little detail): see Oakley 1997: 83-4; Roth 2006: 49-50; Koon 2010: 27-8, 30-1.

<sup>149</sup> Laistner 1947: 95; Ridley 1990: 133 n. 53; Koon 2010: 23; cf. Kraus 1994: 1 n. 1. An instructive comparison can be drawn between Livy’s depictions battle and those of Caesar: despite their author’s military experience, the battles in the *Commentarii* are also formulaic and simplified, and have been deemed unrealistic by no less an authority on military matters than John Keegan 1976: 63-4; Koon 2010: 27.

<sup>150</sup> Cf. Koon 2010: 23: ‘as an educated member of the élite, coming to age during the civil war period, it is likely [Livy] would have had at least some military experience’; Ridley 1990: 133 n. 53: ‘it seems that given these dates it is impossible for Livy to have escaped military service.’

42.<sup>151</sup> Equestrian youths, by tacit convention, may not have been subject to conscription under normal circumstances.<sup>152</sup> The consecutive crises of the 40s, however, created an enormous demand on Italian manpower, and a considerable proportion of the citizen population of Italy volunteered or was conscripted to serve at one time or another during that decade.<sup>153</sup> Whether Livy served or not, it is probable that many of his acquaintances, particularly men of his own generation, would have fought in armies pitted against their fellow Romans.<sup>154</sup> His own community was certainly involved, if only in a minor way, in the struggles of the dynasts following Caesar's assassination. The war between M. Antonius and the allies of D. Brutus Albinus took place not far from Livy's hometown. It saw Mutina besieged, Parma sacked, and (according to Cicero) the province of Gallia Cisalpina ravaged by Antonius' army.<sup>155</sup> Pitched battles with heavy losses on both sides were fought at Forum Gallorum and Mutina.<sup>156</sup> Patavium, along with other Cisalpine cities, was dragged into the war: according to Cicero, 'the Patavines shut out some men sent by Antonius and cast out others, aided our commanders with money, with soldiers, and – what was greatly lacking – with arms' (*Phil.* 12.10: *Patauini alios excluserunt, alios eiecerunt missos ab Antonio, pecunia, militibus, et, quod maxime deerat, armis nostros duces adiuuerunt*). If Livy was born in 64 (or if the usual minimum age for

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<sup>151</sup> Even during the late Republic conscription remained the standard method of recruitment, and service remained obligatory, at least by law, for all *assidui*: see Smith 1958: 44-7; Brunt 1971: 391, 410; 1988: 255; 1990: 188; Keppie 1984: 62. If Livy did spend time in the army, his term of service need not have been long: towards the end of the Republic, cavalrymen might expect to serve for as little as three years, legionaries for six: *Tabula Heracleensis* 5.90, 100-2 (Crawford 1996: 1.306) = *FIRA* I, 13.90, 100-2; Brunt 1962: 80-1; 1971: 399-402, 490; 1988: 255-6, 267; Keppie 1984, 62, 76-7.

<sup>152</sup> See Keppie 1984: 79; 1996: 371; 1997: 6-7 and *passim*. Keppie's argument rests in large part on the apparent absence of Roman citizen cavalry during the late Republic. Equestrian youths had no legal protection from conscription, however, and McCall 2002: 105-6, cf. 111 hypothesises that, given the preference for soldiers from respectable (i.e. freeborn and propertied) backgrounds, in periods of high pressure on Roman manpower some *equites* may have been conscripted into to serve as infantrymen. *Equites* would otherwise have served as officers in the late Republican armies: see de Blois 1987: 14-15.

<sup>153</sup> For the number of soldiers under arms during the 40s, see Brunt 1971: 473-98, 509-12. Brunt estimates that some 80,000 men were recruited in Italy in 44-43, and a further 90,000 in 42-40. On the use of conscription during the 40s, see Brunt 1971: 409, with the sources cited 635-7; 1990: 193.

<sup>154</sup> Although a very high proportion of Italy's young men served in the armies during the 40s and 30s, by any estimate it is true that the majority did not: Brunt 1990: 192; cf. Brunt 1971: 509-12.

<sup>155</sup> Siege of Mutina: App. *B Civ.* 3.49, 65; Brunt 1971: 290. Sack of Parma: Cic. *Fam.* 10.33.4; 11.13b; cf. 12.5.2; Brunt 1971: 290. Cisalpina ravaged: Cic. *Phil.* 3.31; cf. 5.25; 7.15, 26; 12.9. Cicero undoubtedly exaggerates for rhetorical effect, but it is not difficult to believe that Antonius would have subjected the region to forced requisitions to support his campaign: Brunt 1971: 290.

<sup>156</sup> Forum Gallorum: App. *B Civ.* 3.66-70; Cic. *Fam.* 10.30. Mutina: App. *B Civ.* 3.71. Cf. Cic. *Fam.* 10.33.4 on the losses in these battles.

conscription was disregarded owing to pressures on manpower), it is possible that he was among the men contributed by Patavium to the legions raised by D. Brutus before he was besieged by Antonius.<sup>157</sup> But if, unlikely as it seems, it is in fact true that Livy ‘stayed at home and read’, as Walsh believes, instead of taking part in the internecine conflicts of the 40s and 30s, the experiences of his community and of his generation in general cannot have failed to have had a profound impact on the young man.<sup>158</sup>

The horror to which Livy and his contemporaries were exposed by civil war was compounded by the rule of the Triumvirate, established by the *lex Titia* of November 43. In the months that followed, M. Antonius, Octavian, and M. Aemilius Lepidus proscribed hundreds of senators and possibly thousands of *equites Romani*.<sup>159</sup> Then, after their victory at Philippi in October 42, the triumvirs undertook to recompense their soldiers through further property confiscations and land redistributions.<sup>160</sup> Again, there is no evidence that Livy fell prey the depredations of 43-40, but this does not mean that he was unaffected by them. It may be that no extant account makes Livy, unlike Vergil, a victim of proscription or confiscation because, as Syme argues, ‘The poet attracted scholiasts, but not the historian.’<sup>161</sup> On the other hand, tales about the victims of the proscriptions were prolific, so much so that they almost constitute a genre of literature.<sup>162</sup> If Livy or his family were known to have been seriously affected, it is likely that after the historian gained some renown stories about his experience of the proscriptions would have circulated. Given Livy’s

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<sup>157</sup> See Cic. *Fam.* 11.7.3; *Phil.* 5.36; 12.9; App. *B Civ.* 3.49, cf. 97; Brunt 1971: 481. Cf. Chilver 1941: 112 on recruitment in Cisalpina, arguing that with the grant of citizenship in 49 ‘a large proportion of the troops who fought in the Civil Wars must have come from Cisalpine Gaul’.

<sup>158</sup> Walsh 1961: 4. Cf. Ridley 1990: 134 on the importance of Livy’s experience of the civil wars to the composition of the first decade.

<sup>159</sup> See Brunt 1971: 326-8.

<sup>160</sup> Appian *B Civ.* 4.3 reports that the land appropriations were planned in advance of the Philippi campaign: eighteen wealthy towns were designated to provide the money and lands required, though Appian only mentions Capua, Rhegium, Venusia, Beneventum, Nuceria, Ariminum, and Vibo. On the confiscations see Brunt 1971: 290-1, 326-1; Keppie 1983.

<sup>161</sup> Syme 1959: 54. On Vergil as a victim of land confiscation, see Suet. *Vita Verg.* 19-20.

<sup>162</sup> See Osgood 2006: 65-81; cf. Syme 1939: 190 n. 6. The extent of this proscription literature is hinted at by Cassius Dio (47.10-11) and reflected in the scores of individual stories reproduced by Appian (*B Civ.* 4.1-51); cf. the episodes in Macrobian *Sat.* 1.11.16-20; Plin. *HN* 7.134; 13.25; 34.6; 37.81; Val. Max. 5.3.4-5; 6.7.2-3, 5-7; 7.3.8-9; 9.5.4; 9.11.5-7. The genesis of this literature is hinted at in two contemporary accounts of survival during the proscriptions, Cornelius Nepos’ biography of T. Atticus (*Att.* 10-11.2; 12.3-5), and the so-called *Laudatio Turiae*, a funerary inscription set up to commemorate a woman by her husband, recalling her help when he was proscribed: see Osgood 2006: 67-74; on the *Laudatio Turiae*, see the commentaries of Durry 1992; Flach 1991; Wistrand 1976; for the *Laudatio* in its wider context, see Osgood 2014. Accounts such as these probably formed the basis of the material drawn on by later authors: Osgood 2006: 67, 74-5.



posthumous reputation, any such stories could not have failed to be recounted by later authors. Livy's life must not have been in danger at any point, and if his family were subjected to confiscations then they were apparently not impoverished by them, as the historian's ability to pursue his vocation without employment or benefactor attests. But again, even if Livy did not personally suffer under the Triumvirate, the collective experience of his peers merits consideration. Livy's social class, the wealthier land-owners of Italy, were the particular victims of triumviral politics.<sup>163</sup> Hundreds, possibly thousands of *equites* were proscribed and eliminated in 43-42.<sup>164</sup> The depth of the terror unleashed by the triumvirs is conveyed by the series of accounts preserved by Appian.<sup>165</sup> The survivors of the proscriptions, both in that year and when Octavian returned from Philippi, suffered the loss of their wealth and land, sacrificed by the dynasts to satisfy their soldiers.<sup>166</sup> Though a lesser evil than death, the state-sanctioned confiscation and redistribution of their land and money, on a scale unseen since Sulla, was the realisation of the perennial fears of the Roman propertied classes.<sup>167</sup> Livy's own visceral antipathy towards land redistribution in any form is quite clear, and may legitimately be traced to the confiscations of the 40s.<sup>168</sup> The strength of the reaction that these provoked is manifest in the widespread revolts against the Triumvirate that culminated in the Perusine War.<sup>169</sup> Livy's native territory of Gallia Cisalpina (which

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<sup>163</sup> See Brunt 1971: 327-8: 'It was clearly the rich who suffered from the confiscations of 43-42, whether their crime was political opposition to the triumvirs or wealth alone; to judge from the names of those whose death or escape is mentioned individually, they were drawn from all over Italy and not merely or indeed mainly from the old senatorial families.'

<sup>164</sup> Appian *B Civ.* 4.5 reports that two thousand *equites* were proscribed, but the accuracy of this figure is doubtful; he puts the number of senators proscribed at three hundred, which is higher than that given by Plutarch (two hundred at *Brut.* 27; *Cic.* 46; however, at *Ant.* 20 he also puts the total at three hundred), and those given by Florus 2.16, Orosius 6.18.10, and the Livian *Periochae* 120 (140, 132, and 130 senators respectively), whose figures derive from Livy: see Brunt 1971: 326 with n. 3. Since Appian's total for the senators proscribed is apparently inflated, the same is probably true of his equestrian total, though by how much is impossible to determine: see Hinard 1985: 264-69; Osgood 2006: 63 with n. 6.

<sup>165</sup> App. *B Civ.* 4.1-51. Osgood (2006: 62-82, 108-151) provides an evocative overview of the experience of the proscriptions and the appropriations after Philippi. A detailed study of the proscriptions is provided by Hinard 1985.

<sup>166</sup> App. *B Civ.* 5.5, 12-15; Brunt 1971, 326-8.

<sup>167</sup> Cf. Brunt 1971, 291. Indignation at the land redistributions is voiced by contemporary authors, e.g. Hor. *Epist.* 2.2.49-52; Prop. 4.1.128-130; Verg. *Ecl.* 1, esp. 64-78; 9.2-6; most notable is the anonymous *Dirae*, a poem cursing an estate transferred to a soldier. Horace expresses a more stoical attitude to land confiscation through his character Ofellus in *Sat.* 2.2, esp. 126-135; see Osgood 2006: 214-19. On reactions to the land appropriations, see Osgood 2006: 108-151.

<sup>168</sup> Livy's attitude is aptly summed up by his description of agrarian laws as the poison of the tribunes of the plebs (2.52.2: *suo ueneno*).

<sup>169</sup> Perusine War: App. *B Civ.* 27-49; cf. Vell. Pat. 2.74. The Perusine War as a reaction to the land redistributions: App. *B Civ.* 5.12.13, 19; cf. Vell. Pat. 2.75 on the simultaneous revolt of Ti. Claudius

had ceased to be a province upon its incorporation into Italia in 42), with its wealth and abundant lands, could hardly have escaped the ravages of 43–40.<sup>170</sup> Patavium itself probably attracted much unwanted attention, given its wealth and the size of its equestrian population.<sup>171</sup> A note in Macrobius describes the particular ruthlessness with which the Patavine upper class was treated by the governor of the territory, none other than C. Asinius Pollio.

Asinio etiam Pollione acerbe cogente Patauinos ut pecuniam et arma conferrent dominisque ob hoc latentibus, praemio seruis cum libertate proposito qui dominos suos proderent, constat seruorum nullum uictum praemio dominum prodidisse (Macrobius *Sat.* 1.11.22).

Also, when Asinius Pollio was harshly compelling the Patavines to contribute money and arms, and when because of this masters were in hiding, he offered a reward together with their freedom to slaves who betrayed their masters; it is agreed that none of the slaves was won over by the reward to betray his master.

As with the wars, Livy's feelings about politics and governance must have been shaped both by the general experiences of his wider social group and by the specific privations of his local community in Patavium, even if he himself came through the late 40s unscathed.

Caesar's invasion of Italy initiated a cycle of civil conflict that lasted for the better part of two decades and reached its nadir in four years of bloody anarchy following his death. Even without knowing his biographical details, it is not difficult to imagine how these conditions might have affected the young Livy. An instructive comparison is available in the poet Sex. Propertius. About ten years Livy's junior, Propertius was a child during the late 40s, yet the impact of those chaotic years on him was profound.<sup>172</sup> A decade or more later the siege and slaughter at Perusia, not far from Propertius' native Assisium, still provoked a visceral response in the poet:

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Nero in Campania (which Velleius is at pains to distinguish from the Perusine War); see Brunt 1971: 290; Osgood 2006: 159–65.

<sup>170</sup> Chilver 1941: 9. The wealth and prosperity of the Po Valley during Livy's lifetime is attested by Strabo 5.1.4, 12; see also Brunt 1971: 172, 178–9, 181–2.

<sup>171</sup> Strabo reports that, according to a recent census – presumably that of A.D. 14 – Patavium 'is said' to have been home to no fewer than five hundred *equites Romani* (5.1.7: ἡ γὰρ νεωστὶ λέγεται τιμήσασθαι πεντακοσίους ἵππικους ἄνδρας: 'indeed it is said to have had five hundred men of equestrian rank counted in the census recently'); while such hearsay very likely exaggerates the equestrian population of Livy's home, it nonetheless reflects the city's wealth, on which see Strabo 5.1.12; Brunt 1971: 200; Chilver 1941: 54–5.

<sup>172</sup> Osgood 2006: 156–9, 168–71; date of birth: Enk 1946: 5.

si Perusina tibi patriae sunt nota sepulcra,  
Italiae duris funera temporibus,  
cum Romana suos egit discordia ciuis... (Prop. 1.22.3-5)

If our fatherland's Perusine graves are known to you,  
the ruin of Italy during hard times,  
when Roman discord stirred up her citizens...

The poem goes on to mention the death of a kinsman during this conflict, whose corpse was left unburied.<sup>173</sup> Later still Propertius recalled with deep emotion how the civil strife had affected his family directly. A poem attests to his enduring anger at the confiscation of his family's lands:

...et in tenuis cogeris ipse lares:  
nam tua cum multi uersarent rura iuuenti,  
abstulit excultas pertica tristis opes (Prop. 4.1.128-30).

...and you were compelled into a meagre hearth:  
for although many young bullocks tilled your estates,  
the pitiless surveying-rod took away that cultivated wealth.

The poem indicates that this took place before Propertius assumed the *toga uirilis* (that is, while he was still a young boy), implying that the confiscation was a consequence either of the proscriptions or of the settlement of the veterans after Philippi (4.1.131-2). The premature death of the poet's father is mentioned in the same context, which implies that the elder Propertius fell victim to the disorders of the late 40s.<sup>174</sup> Livy may not have suffered the effects of these disorders as directly as Propertius, but his adolescent mind would have been able to contextualise the disorders, to appreciate their scale and significance more readily than his younger contemporary's. It may reasonably be assumed that the Patavine was comparably affected by the chaos of the 40s, that he too came to harbour a deep abhorrence of civil war and political dissension, what Propertius calls *discordia*.

A similar impact is evident in the writings of other survivors of the turbulent 40s. After the pact between Octavian and Antonius at Brundisium in September 40 a degree of normality was restored to Italy, with the subsequent dynastic wars largely confined to the provinces. Nevertheless, the trauma of civil violence lingered as did the sense of personal and material insecurity occasioned by the proscriptions, confiscations, and famine of the preceding years. The literature of the late 40s and 30s

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<sup>173</sup> Prop. 1.22.6-8, cf. 1.21, addressed to the same fallen relative; see Osgood 2006: 158-9, 168-71.

<sup>174</sup> Prop. 4.1.127-8; Osgood 2006: 158.

contains an undercurrent of unease, reflecting an awareness of the fragility of Italian peace and of the dire consequences of *discordia*. *discordia* is blamed by Vergil in his *Eclogae* (probably composed between 42 and 39) and by the unknown author of the *Dirae* (written perhaps in the mid-30s) for the confiscation and redistribution of farms to soldiers.<sup>175</sup> Sallust's historical works, too, evince a preoccupation with *discordia*.<sup>176</sup> Naturally enough, this consciousness of the dreadful implications of political disharmony did not encourage a great deal of optimism in the writers of the 30s. Even in his fourth eclogue, a poem composed specifically to celebrate the dawn of a new Golden Age (with the pact of Brundisium made between Octavian and Antonius in September 40), Vergil could not quite bring himself to declare that universal peace would follow immediately.<sup>177</sup> In contrast, Horace in his seventh epode expects no end to civil war at all. Probably written in the early 30s before the outbreak of war with Sex. Pompeius, the poem anticipates the renewal of civil hostilities with a palpable and entirely understandable war-weariness.<sup>178</sup> In this pessimistic frame of mind, the poet depicts fratricide as a national characteristic of the Roman people, a legacy of their founder Romulus' crime:

sic est: acerba fata Romanos agunt  
 scelusque fraternae necis,  
 ut immerentis fluxit in terram Remi  
 sacer nepotibus cruor (Hor. *Epod.* 7.17-20).

So it is: a harsh fate and the crime  
 of fraternal murder drives the Romans on,  
 ever since the blood of guiltless Remus flowed  
 into the earth, a curse on his descendants.

Horace implies that fraternal bloodshed is inexorable, and hence that the cycle of violence will continue indefinitely. The impression is reinforced by the penultimate epode (16.1-14), which opens with another lament about civil war. Foreseeing Rome's self-destruction, Horace fantasises about the entire *ciuitas* sailing away to the Blessed Isles (16.15-66). This poem was obviously written before the jubilant ninth epode

<sup>175</sup> *Dir.* 82-3; Verg. *Ecl.* 1.71; Osgood 2006: 153-4, 165.

<sup>176</sup> Osgood 2006: 154; on *discordia* as a theme in the *Bellum Iugurthinum*, see Kraus 1999.

<sup>177</sup> N.B. Verg. *Ecl.* 4.31-6, cf. the use of the future tense in 11-14; Osgood 2006: 154, cf. 199-200. Farrell 2005: 46 points out that the force of *Ecl.* 4 is somewhat obviated by the overall impression of the collection in which it was published, which is 'one of regret for a lost world'. On the context and significance of *Ecl.* 4 see Osgood 2006: 193-201.

<sup>178</sup> See Osgood 2006: 200-1.

celebrating Octavian's victory at Actium, and together with the seventh it conveys a sense of profound pessimism engendered by the poet's earlier experiences of civil discord.<sup>179</sup>

Livy's history was a product of the same milieu of apprehension, a product, indeed, of the 30s. The *AUC* was once regarded as a firmly Augustan piece of literature, composed after the 'restoration' of the *res publica* in 27. The trend in Livian scholarship, however, has been to move his starting date further back in time, closer to the period of civil war that came to an end with the death of Antonius in August 30.<sup>180</sup> In older scholarship, the composition of the first pentad is usually dated to between 27 and 25: the earlier date derived from Livy's use of the name *Augustus*, bestowed on Octavian on 13 January 27, the latter from Livy's reference to Augustus' first closing of the Temple of Janus in 29 but not to the second closing in 25.<sup>181</sup> A group of scholars subsequently suggested that the references to Augustus are interpolations, introduced by Livy into a later edition of his first pentad; this has been widely accepted since Luce's penetrating 1965 article.<sup>182</sup> If a second edition of the first pentad was published between 27 and 25, Livy must have started his work some years before this. Most commentators favour a date not long after the Battle of Actium (2 September 31), usually c. 29.<sup>183</sup> Some, however, propose an even earlier starting date, sometime before Actium.<sup>184</sup> Recently, Paul J. Burton has argued that internal evidence suggests that Book 1 was begun in 33 or early 32.<sup>185</sup> If this hypothesis is

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<sup>179</sup> Farrell 2005: 47.

<sup>180</sup> For an overview of attempts to date Livy's first pentad and the *praefatio*, see Burton 2000: 430-6, with bibliography 430 n. 4.

<sup>181</sup> *Augustus*: 1.19.3; 4.20.5-11; first closing of the Temple of Janus: 1.19.3; see Burton 2000: 430-2.

<sup>182</sup> The possibility of interpolations was first raised by Soltau 1894: 611-12; followed by Syme 1959: 43; Bayet 1961: xvii-xv; Petersen 1961: 440; Luce 1965; see Burton 2000: 432-3, 435.

<sup>183</sup> E.g. Bayet 1940: xviii-xix (c. 31-29); Syme 1959: 41, 42-50 (29); Ogilvie 1965: 2, 94 (29); Badian 1991: 18 (c. 30-28); Mellor 1999: 71; Luce 1965: 238 suggests a date of around the Battle of Actium; Mensching 1967: 22 however, rejects the idea that 1.19.3 is an insertion and favours the traditional starting date of 27. For a summary of their justifications, see Burton 2000: 436-8.

<sup>184</sup> E.g. Woodman 1988: 132; Galinsky 1996: 281; Duff 2003: 84; Levene 2011: 284.

<sup>185</sup> Burton 2000: 438-45. Burton interprets a comment in Livy's account of the construction of the Cloaca Maxima and of new seats in the Circus Maximus (1.56.2: *quibus duobus operibus uix noua haec magnificentia quicquam adaequare potuit*: 'two works which this new splendour has been barely able to equal in any way') as a reference to public works undertaken by M. Agrippa during his aedileate in 33 (see Cass. Dio 49.43.1-2; Plin. *HN* 36.104; Strabo 5.3.8). Burton argues that a starting date of not long after 33 is corroborated by Livy's silence in Book I about the restoration of the Temple of Jupiter Feretrius. Octavian undertook the restoration at the urging of T. Pomponius Atticus (Nep. *Att.* 20.3): since Atticus died in March 32 (Nep. *Att.* 22.3), the restoration of the temple must have begun before this date. Logically, Livy must have begun writing his first book after Agrippa's projects and before Atticus' death, therefore between 33 and early 32.

correct, then Livy started writing his history ‘when the world of the Republic – the only one he had ever known – was tottering on the edge of destruction, not when it was being “restored” ’.<sup>186</sup> In 33 and early 32 tensions between Octavian and Antonius were rising, and many must have foreseen the coming civil war.<sup>187</sup> A starting date of around 33 would certainly account for the gloomy tone of Livy’s *praefatio*, which, if Burton’s dating is correct, may have been written on the eve of or indeed during the War of Actium.<sup>188</sup>

### **1.3 Livy’s pessimistic history**

The pessimism evinced by Livy’s introduction has often been noted, yet has rarely been afforded the prominence it deserves in interpreting his work.<sup>189</sup> Even Syme, shortly after discussing the negativity of the *praefatio*, goes on to pronounce Livy unaffected by the turmoil of his youth and contrasts him with the ‘bitter and pessimistic’ Sallust and Pollio.<sup>190</sup> Syme and others have underemphasised the younger historian’s own apprehension in large part because they have tended to regard him as an enthusiastic supporter of Augustus’ dispensation and its offer of peace, as an earlier discussion has shown.<sup>191</sup> Section 1.2 also demonstrated that this position is based in large part on dubious assumptions about Livy’s background and social class. But the claim that Livy took to the principate with alacrity is not justified by any self-evident indications in the *AUC* itself. The tone of the *praefatio* certainly does not reflect Livy’s alleged enthusiasm, either about the princeps or the prospect of a lasting peace.<sup>192</sup> The historian depicts the troubles of recent years as an ongoing problem, even justifying his decision to write about antiquity by the welcome distraction this will afford him:

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<sup>186</sup> Burton 2000: 446.

<sup>187</sup> See Syme 1939: 276-93.

<sup>188</sup> Burton 2000: 444-5. It is considered likely that Livy wrote and published Book 1 independently; then, when the public proved receptive, Livy composed Books 2-5 and released his first pentad as a single unit, with a new preface to accompany it: see Burton 2000: 444-5.

<sup>189</sup> Livy’s pessimism is usually mentioned only in passing, and mostly in connection with the *praefatio*, e.g. Syme 1939, 335-6, 441 n. 4; 1959: 42, cf. 49; Carney 1959: 4; Walsh 1961: 18, 271-2; 1961a: 31; 1982: 1063-4; Woodman 1988: 138; Badian 1993: 17; Duff 2003: 83-5; Moles 2009: 69; Levene 2011: 284. Exceptions to this include Mellor 1999: 50-1.

<sup>190</sup> Syme 1959: 57.

<sup>191</sup> Syme 1959: 75. Walsh 1961: 272 is an exception insofar as he considers Livy ‘only superficially affected by the Augustan *Zeitgeist*’, but in stressing Livy’s ‘Republican’ influences he underestimates the impact of the upheavals of the historian’s youth, declaring that his work ‘would not have been vastly different if Livy had written thirty years earlier.’

<sup>192</sup> Badian 1993: 18-19; Warrior 2006: 422; cf. Carney 1959: 4.

ego...quoque laboris praemium petam, ut me a conspectu malorum quae nostra tot per annos uidit aetas, tantisper certe dum prisca illa tota mente repeto, auertam, omnis expers curae quae scribentis animum, etsi non flectere a uero, sollicitam tamen efficere posset (*praef.* 5).

I...shall also seek this reward for my labour: that I may turn away from the sight of the evils which our age has been seeing for so many years for the short time while, completely absorbed, I retrace those early times, free of all concern that, if it cannot divert it from the truth, can nevertheless trouble the soul of one writing.

There is no suggestion that he considers these *mala* to have ended, or that he foresees their end shortly.<sup>193</sup> Likewise, when he describes his nation's problems in terms of moral decline, he locates these troubles firmly in the present.<sup>194</sup> And again, for Livy there is no end in sight: the meaning of *remedia* will be discussed shortly, but if for the sake of argument it is accepted that the term does contain a veiled reference to the Augustan principate, it should also be noted that Livy does not expect this cure to be effective: 'we can endure neither our vices *nor their cures*' (*praef.* 9: *nec uitia nostra nec remedia pati possumus*). There is no support here for the idea that Livy welcomed Augustus' rule or associated it with the impending restoration of order and peace. Meanwhile, the brief mentions of the emperor in the history (and there are very few) reflect a respectful but otherwise neutral attitude.<sup>195</sup> The history may also contain more allusive references to Augustus, and many scholars have discerned parallels between various prominent characters and the princeps.<sup>196</sup> The problem with attempts to discern Livy's attitude from these supposed parallels is that they inevitably rely on *a priori* assumptions about what the author's views ought to be. Thus, if Livy is assigned a positive attitude towards the princeps, his laudatory portrayals of figures such as Camillus can be interpreted as positive allusions to Augustus. Equally, if Livy is considered ambivalent towards Augustus, then critical elements in his depictions of Romulus and Camillus can be taken as veiled criticisms of the princeps. Without denying that Livy responded to contemporary events in his writing, it seems doubtful that any meaningful information about the historian's view of the regime can be derived from his depiction of the great figures of Roman history, especially since most

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<sup>193</sup> Cf. Warrior 2006: 2 n. 7.

<sup>194</sup> *praef.* 9: *donec ad haec tempora*; *praef.* 12: *nuper*.

<sup>195</sup> Mellor 1999: 71; cf. Ridley 1990: 133-4. Augustus is mentioned at 1.19.3; 4.20.7; 28.12.12.

<sup>196</sup> More tentatively, Miles 1995: 88-94 (Augustus and Livy's Camillus), 164 (Augustus and Romulus).

of these figures appear in books which likely predate the principate.<sup>197</sup> All that can be said with certainty of Livy's attitude towards the principate is that his extant work does not manifest any particular enthusiasm for it. For this reason, and on the chronological grounds outlined above, Livy's project at its inception should not be thought of as 'Augustan'. As Ronald T. Ridley rightly recognises, the historian's outlook at the beginning of his work was shaped far more by two decades of continual civil war than by the regime which was then still in its infancy.<sup>198</sup>

The shadow cast by the conflicts of the 40s and 30s likely fell not only on the first decade of the *AUC*, but over later books, too. The pessimism expressed in the *praefatio* may be the product of the civil wars, but it would not have been out of place in the first decade of Augustus' rule.<sup>199</sup> Octavian's victory over Antonius made a lasting peace conceivable but by no means certain.<sup>200</sup> The moments of peace in the past twenty years had proved all too brief, and many Romans will have been too sceptical to invest much confidence in the latest one.<sup>201</sup> There were tense moments in the years following Actium in which the fragile peace must have appeared to be in jeopardy. Since his youth the princeps had suffered bad health; a bout of illness during his Cantabrian campaign delayed his return to Rome in 24, where after a brief respite he became so grievously ill in 23 that he entrusted important state documents to his co-consul and gave his signet-ring to Agrippa, seemingly in preparation for his death.<sup>202</sup> Though Augustus recovered, few can have anticipated that he would live as long as he did, and the likelihood of civil war in the event of his death must have seemed high.<sup>203</sup> The princeps also survived several conspiracies, including one led by M. Lepidus, the son of the triumvir, immediately after Actium.<sup>204</sup> Though he had

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<sup>197</sup> *Contra* Mineo 2015a: 129-31. See the criticisms of Laistner 1947: 97-8; Walsh 1961: 16-18; Ridley 1990: 133-4; Badian 1993: 19-21; Fox 2015: 294-5; Oakley 2015: 240. Gaertner 2008 demonstrates that supposedly Augustan elements in Livy's Camillus narrative are late Republican; Oakley 2015: 240 points out that Livy's depiction of Camillus is as likely to have invited comparison with figures such as Cn. Pompeius Magnus, M. Licinus Crassus, Cicero, and Caesar, as with Augustus; too great a focus on the *princeps* on the part of modern scholars risks obscuring the resonances historical figures would have had for Livy's contemporaries.

<sup>198</sup> Ridley 1990: 134.

<sup>199</sup> Syme 1939: 335-6; 1959: 43, 49; Warrior 2006: 2 n. 7; Moles 2009: 68-9. Thus the tone of the *praefatio* alone does not preclude the possibility that it was written after Actium.

<sup>200</sup> Warrior 2006: 2 n. 7.

<sup>201</sup> Cf. Syme 1939: 335-6; Warrior 2006: 2 n. 7.

<sup>202</sup> Cass. Dio 53.25.7 (cf. 53.27.5, 28.1); 53.30.1-2; Suet. *Aug.* 81.1; Syme 1939: 332-3, 335.

<sup>203</sup> Syme 1959: 49; cf. Syme 1939: 336.

<sup>204</sup> Suet. *Aug.* 19.1; Vell. Pat. 2.88. A list of conspiracies and rebellions survived by Augustus is provided, with scant detail, by Suet. *Aug.* 19.



eliminated his only real rival at Alexandria the emperor clearly remained wary of prominent and powerful figures, and an atmosphere of suspicion seems to have prevailed during the 20s. Real or imagined threats to Augustus' supremacy resulted in the prosecution for treason of two governors of strategically important provinces, C. Cornelius Gallus the prefect of Egypt in 28/27, and M. Primus the proconsul of Macedonia in 23.<sup>205</sup> The latter was defended by Varro Murena, Augustus' colleague in the consulship of 23 who, together with one Fannius Caepio, was implicated in a plot against the princeps in the same year.<sup>206</sup> The conspiracy of Murena and Augustus' severe illness soon after it apparently brought the fragility of the Augustan settlement to light, for it seems that steps were taken to consolidate the regime.<sup>207</sup> Even at this time, as Syme points out, the memory of the assassination of Caesar and the civil wars and proscriptions that followed was fresh, and the regime's jubilant propaganda in the wake of Actium does not entirely obscure 'a deep sense of disquiet and insecurity, still to be detected in contemporary literature'.<sup>208</sup> Syme cites the second of Horace's first collection of odes, composed between 29 and 23, with its lingering horror of civil war and its prayer for security.<sup>209</sup> He also cites Livy's *praefatio*, and although it was probably composed earlier than Syme believes, it may be significant that Livy never rewrote his preface to convey a more optimistic outlook, even after the closing(s) of the Temple of Janus or the 'restoration' of the *res publica*.<sup>210</sup> Indeed, even after a period of peace Livy's view of the *res publica*'s prospects for survival had not improved dramatically.<sup>211</sup> By the time Livy came to his ninth book Rome had enjoyed some years of internal peace and concord. He mentions this fact in passing at the end of his excursus on Alexander the Great when he asserts that Rome's armies would

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<sup>205</sup> Gallus: Cass. Dio 53.23.5-7; Suet. *Aug.* 66.2; Syme 1939: 309-10. Primus: Cass. Dio 54.3.2-3; Syme 1939: 333. The princeps' wariness about allowing powerful men to become too prominent is probably also the reason that M. Licinius Crassus did not claim his right to dedicate the *spolia opima* in 28/27: Cass. Dio 51.24.4; see Dessau 1906; Syme 1939: 308-9, 310; Rich 1996: 106-9. (Incidentally, Dessau proposed that it was in this context that the princeps made public his 'discovery' about Cossus' corslet and his consular rank, in an effort to deny Crassus, a proconsul, any appeal to the precedent of someone without the auspices claiming the *spolia opima*. Dessau's thesis is generally accepted; Rich 1996: 112-121 and *passim*, however, argues that the princeps' interest in Cossus' rank was antiquarian in nature, and unrelated to Crassus; for a sceptical reply, see Levick 2015: 31-2.)

<sup>206</sup> Cass. Dio 54.3.4-8; Suet. *Aug.* 19.1; Vell. Pat. 2.91.2; See Syme 1939: 333-4.

<sup>207</sup> The so-called settlement of 23, which was probably when the *tribunicia potestas* was formally conferred on Augustus: see Syme 1939: 335-8. Syme 1939: 339-46 also argues that measures were taken to ensure that power would be transferred smoothly to Agrippa in the event of the princeps' death.

<sup>208</sup> Syme 1939: 335; cf. Syme 1959: 49.

<sup>209</sup> Hor. *Carm.* 1.2, esp. 25-52; Syme 1939: 335-6; cf. Syme 1959: 49.

<sup>210</sup> Badian 1993: 18-19.

<sup>211</sup> Cf. Badian 1993: 19.

continue to triumph over Hellenic arms ‘if only the love of this peace in which we are living endures, along with concern for civil concord’ (9.19.17: *modo sit perpetuus huius qua uiuimus pacis amor et ciuilis cura concordiae*). This comment – and Livy’s preceding plea, ‘may civil wars be silent!’ (9.19.15: *ciuilia bella sileant*) – does not express an abundance of confidence in the *pax Augusta*. It is reasonable to infer that Livy’s apprehension persisted for at least as long as the instability that plagued Augustus’ principate. By that time, however, most of the extant books of the *AUC* must have been complete. It therefore stands to reason that anxiety about a renewal of civil strife accompanied both the conception of the Livy’s history and the composition of most of what remains of it.

The pessimism engendered by the upheavals of Livy’s early years is essential to understanding his aims and intentions. The *praefatio* makes it clear that Livy initially thought of Rome’s history in organic terms, as one of growth, maturity, and inevitable decline.<sup>212</sup>

ad illa mihi pro se quisque acriter intendat animum, quae uita, qui mores fuerint, per quos uiros quibusque artibus domi militiaeque et partum et auctum imperium sit; labante deinde paulatim disciplina uelut dissidentes primo mores sequatur animo, deinde ut magis magisque lapsi sint, tum ire coeperint praecipites, donec ad haec tempora quibus nec uitia nostra nec remedia pati possumus peruentum est (*praef.* 9).

I would have every man direct his attention keenly to these matters: what life and morals there were; through what men and which skills in domestic and military affairs *imperium* was established and increased; then let him follow in his mind how morals are first subsiding as *disciplina* gives way little by little, then slipping more and more, and thereafter start to collapse headlong, until finally it has come to these times in which we can endure neither our vices nor their cures.

This passage seems to suggest that the historian intended to end his account at what he considered the final, fatal moments of the Roman nation.<sup>213</sup> P. A. Stadter argues for structural reasons that Book 120 marked the end of Livy’s original project.<sup>214</sup> This is the most plausible explanation for the author’s decision not to publish his subsequent

<sup>212</sup> Cf. Walsh 1961: 65-6; Woodman 1988: 130-2; Duff 2003: 84-5.

<sup>213</sup> Duff 2003: 85.

<sup>214</sup> Stadter 1972: the crux of his argument is that since the extant portions of the *AUC* consist of pentads and decades, there is no reason to assume that Livy abandoned this structure in his lost books; this is borne out by his examination of the *Periochae*, at least for Books 1-120, hence these books constitute Livy’s original project; accepted by Woodman 1988: 136; Mellor 1999: 49; Duff 2003: 79, 85.

work: in all probability they represent a separate project, his contemporary *historiae*, probably incomplete at the time of his death, as distinct from his *annales* of the more remote past.<sup>215</sup> Book 120 described the inception of the Triumvirate, the official condemnation of Caesar's assassins, and the proscription of the triumvirs' enemies; it also included an account of M. Brutus' activities in Greece.<sup>216</sup> Livy therefore decided to end his history with the suspension of *libertas* by the Triumvirate and the terror of the proscriptions, at the same time foreshadowing the coming civil war between the triumvirs and the *Liberatores*. This is an appropriate choice of end-point for a history of Rome's rise and fall, and an unsurprising one, too, in view of how that period must have affected the author. By the time Livy actually came to write Book 120 his historical outlook might well have changed, becoming more positive about Rome's prospects as the *pax Augusta* endured and the memory of the civil wars faded.<sup>217</sup> This would explain his decision to continue writing, to give an account of Rome's survival and the revival of its fortunes.<sup>218</sup> But his original project was conceived and begun in a mood of despair and was intended to highlight Roman decline to the present.<sup>219</sup>

Syme's impression that Livy was 'relatively untouched by the era of tribulation' is misleading. Twenty years of violence and insecurity had given the young Patavine a startlingly pessimistic conception of the trajectory of Roman history. But rather than averting his eyes from the painful sight of present, Livy chose to confront it by writing the history of how Rome had arrived its current woeful state.<sup>220</sup> Though he begins in the distant past, Livy's gaze is fixed firmly on the present.<sup>221</sup> The

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<sup>215</sup> Cf. Mehl 2011: 101-2, pointing out that Drusus' death in 9 at the end of Book 142 is too insignificant an event to have been chosen to conclude Livy's grand history.

<sup>216</sup> *Per.* 120. Livy's account of Cicero's death, preserved in Sen. *Suas.* 6.17, may have been the end of the book 'Since Cicero had come almost to symbolise the republic': Woodman 1998: 136; see also Mellor 1999: 49; Duff 2003: 79, 85. Henderson 1989 offers an interesting critique (which, characteristically of its author and no doubt intentionally, leaves the reader with more questions than answers) of the idea that Book 120 marked the end of the Livy's original project, suggesting that Livy's history had no end point. But Stadter's case, based on the symmetry of the 120-book narrative, remains convincing. Indeed, Henderson 1997: 106 admits that the death of Cicero 'has proved a convincing putative terminus for the [AUC] in its original conception', though he does not necessarily include himself among the convinced.

<sup>217</sup> Woodman 1988: 138; Duff 2003: 85; Levene 2011: 284; Mehl 2011: 106-7.

<sup>218</sup> Duff 2003: 79, 85-6. Books 121-42 are still better regarded as a separate work rather than an updated ending to the AUC.

<sup>219</sup> Duff 2003: 85.

<sup>220</sup> Moles 2009: 76-7, 85.

<sup>221</sup> Moles 2009: 85; Levene 2011: 284-5. Livy's claim (*praef.* 4-5; accepted at face value by Walsh 1961: 65 and Ogilvie 1965: 25) that, while his readership may be eager to read about modern events, he will take greater pleasure in directing his attention away from contemporary troubles, is not actually born out by his work. He devotes less attention to Roman antiquity than he could have (compare

historian was mindful of the *res publica*'s slow political disintegration throughout the composition of his work. It therefore stands to reason that, far from being an apolitical text, the *AUC* is suffused with an awareness of its own potential political significance.

Livy's mindfulness of politics is apparent in the purpose as well as the narrative arc of his history. Although worried about Rome's current infirmity, Livy believes that cures are available, albeit ones that his contemporaries find difficult to swallow (*praef.* 9). As mentioned, the *remedia* of *praefatio* 9 have often been identified, at least in part, with the Augustan principate. This interpretation is not justified. It attributes to Livy a readiness to accept autocracy that is utterly incongruous with his otherwise traditional Roman outlook.<sup>222</sup> It also assumes that Livy would have associated autocracy with the prospect of a lasting peace: a highly implausible thesis, given the failure of Rome's most recent autocrat and the horrors that followed his death. Moreover, the early dating for the composition of the *praefatio* suggested above would obviously preclude any reference to the Augustan settlement. Woodman, arguing that Livy began writing before Actium, proposes that the historian is alluding not to Augustus specifically but to the institution of monarchy in general.<sup>223</sup> The same objections apply to this proposal as to the idea that he could have supported Augustus' monarchy, with the added objection that it attributes to Livy an improbable prescience.<sup>224</sup> The urge to project a teleological view of Roman history onto Livy must be resisted. Everything considered, it is extremely unlikely that Livy would have

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Dionysius of Halicarnassus' far more detailed account) and dedicates fully half of his original 120 books to the previous century: see Levene 2011: 284-5. Marincola 1997: 140-1 makes a convincing case that Livy's presentation of his work as a form of escapism is a rhetorical device, 'an elaborate *diminutio* that allows him to avoid completely the question of his own qualifications and experience'.

<sup>222</sup> Walsh 1961a: 31; cf. Martin 2015: 268, who stresses that Livy chose to retain the *praefatio* with its original 'republican' spirit. This objection applies as much to those who believe that Livy was apprehensive about the principate, e.g. Mellor 1999: 71, as to those who imagine Livy welcoming it. Here again, the idea that Livy could have accepted autocracy is justified on the spurious basis of class. Livy's treatment of the subject in Book 1 indicates that he held a generally negative view of monarchy. Martin 2015: 264-7 argues that Livy views monarchy as 'intrinsically bad, in that it forbids the exercising of the supreme civil good, *libertas*': thus, although in accordance with Livy's understanding of the evolution of governmental systems, monarchy is a necessary starting point for Roman history, this does not make monarchy desirable. Furthermore, at 1.6.4 Livy denounces the desire to rule as a monarch, *regni cupido*, as *auitum malum*, illustrated by the fratricidal struggle between Romulus and Remus: Martin 2015: 265.

<sup>223</sup> Woodman 1988: 134-5. Galinsky 1996: 281-2 more tentatively suggests that *remedia* may refer to 'some kind of constitutional autocracy', while admitting alternative possibilities.

<sup>224</sup> Indeed, Walsh 1961: 163 and 1961a: 29 specifically criticises Livy for lacking the foresight to see the inevitability of monarchy.

imagined that monarchy could cure Rome's ills.<sup>225</sup> It has also been argued that at least one component of the intolerable *remedia* was a revival of traditional morality. In fact, some commentators have seen in *remedia* a specific allusion to a thwarted attempt by Augustus to introduce moral legislation governing marriage in the early 20s, legislation to which Propertius supposedly refers.<sup>226</sup> This interpretation, too, ought to be rejected: Syme and Moles have quite rightly argued that a comment about any specific legislation is too trivial to be appropriate in the introduction to the most ambitious history of the Roman people yet undertaken; Livy is expressing more general concerns.<sup>227</sup> It is far more likely that Livy was making a point about the need for moral revival in general.<sup>228</sup>

That moral instruction is the primary function of the *AUC* is universally acknowledged.<sup>229</sup> It is stated plainly in the *praefatio*:

hoc illud est praecipue in cognitione rerum salubre ac frugiferum, omnis te exempli documenta in inlustri posita monumento intueri; inde tibi tuaeque rei publicae quod imitere capias, inde foedum inceptu foedum exitu quod uites (*praef.* 10).

This is the thing that is especially salutary and fruitful in learning history: that you behold lessons of every model as though they were set forth on a conspicuous monument; that from these you choose for yourself and for your *res publica* what to imitate, and from these what to avoid as despicable in its undertaking and despicable in its result.

What has been insufficiently recognised is the political dimension of Livy's moralising, despite his statement that the *documenta* afforded by history are as pertinent to a person's *res publica* as well as to his private conduct.<sup>230</sup> This is because, as ever, the historian is not considered interested in politics. Indeed, there has been a tendency to distinguish Livy from certain other Roman historians, above all Sallust

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<sup>225</sup> *Contra* Martin 2015: 269, who, while stressing Livy's general 'republicanism' and his hostility to *regnum*, nevertheless interprets the opening words of Book 2 (*liberi iam hinc*) to mean that Livy thought the that *res publica* and *libertas* endured, or had been revived, thanks to the *princeps*.

<sup>226</sup> Prop. 2.7.1-3; see e.g. Dessau 1903: 461-2; Ogilvie 1965: 28.

<sup>227</sup> Syme 1959: 42; Moles 2009: 69. See also Galinsky 1996: 281-2, who questions the interpretation on chronological grounds, arguing that the *praefatio* predates Actium and, as such, any possible moral legislation by the princeps; Woodman 1988: 132-134 and Badian 1993: 17 question the interpretation by casting doubt on the very existence of any early marriage law, which is after all inferred from a solitary and opaque allusion in a line of poetry without any direct evidence to support it; cf. Badian 1985.

<sup>228</sup> Walsh 1961a: 29.

<sup>229</sup> An extensive analysis of Livy's moral aims are provided by Walsh 1961: 39-40, 66-109.

<sup>230</sup> Kraus 1997: 55-6 give due emphasis to the fact that Livy is addressing his reader as a citizen as well as a private individual in this passage.

and Tacitus, precisely because he is viewed as a moralist rather than an historian with political concerns writing primarily for a politically-active audience.<sup>231</sup> Syme in particular presses this interpretation, declaring Livy an anomaly in the development of serious Roman historiography between Sallust and Tacitus and contrasting Livy's 'moral' and 'benevolent' *annales* with their 'sombre and pessimistic conception of politics and of human nature'.<sup>232</sup> Yet no such distinction existed in antiquity, and on closer examination this modern artifice collapses.<sup>233</sup> Tacitus, like Livy, sets out explicitly moral aims in his *Annales* and intends his *Historiae* to provide good moral exemplars, *bona exempla*.<sup>234</sup> Tacitus and Sallust no less than Livy see moral decay at the heart of Rome's political troubles.<sup>235</sup> On the other hand, like Sallust and Tacitus Livy is conscious of the social and institutional problems in politics.<sup>236</sup> Livy is thus operating within the same tradition as Sallust and Tacitus, so it is unreasonable to assert that his historical concerns are somehow distinct in any essential way from theirs. Ancient historians did not distinguish the moral realm from the political the way some modern scholars are wont to do. The Roman conception of society, and Livy's in particular, is more integrated, with morality incorporated into all of its aspects and therefore inseparable from politics.<sup>237</sup> Hence, political problems were explained in terms of the moral failings of individuals, such as ambition; similarly, economic problems might be attributed to greed.<sup>238</sup> Thus for Livy, contemporary political troubles are a symptom of the general malaise afflicting Roman civilisation.<sup>239</sup> Again, this is quite clear from his reflections in the *praefatio*. In outlining his understanding of Roman history, he relates Rome's successes to its former uprightness, and its current ills to *uitia*, moral failings, emphasising especially *avaritia* and *luxuria* (*praef.* 9-12). These vices are the cause of public as well as private ruin:

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<sup>231</sup> E.g. Syme 1959: 56-7, 75; Ogilvie 1965: 3; Badian 1966; Mellor 1999: 56.

<sup>232</sup> Syme 1959: 75.

<sup>233</sup> See Levene 2011: 276-80 for a critique of the idea of a dichotomy of political and non-political historians.

<sup>234</sup> Tac. *Ann.* 3.65.1; *Hist.* 1.3.1; Walsh 1961: 39.

<sup>235</sup> E.g. Sall. *Cat.* 5.8-9; 10-14; *Iug.* 4.7-9; 41.1-5; Tac. *Ann.* 1.2; 1.4.1-2; 3.65; cf. *Hist.* 1.2.2-3. See Levick 2015: 25, on Sallust and Livy's moralising interpretation of late Republican political turmoil.

<sup>236</sup> As his account of the 'Struggles of the Orders' clearly illustrates: see Ridley 1990: 109-21; Connolly 2009: 190-3; Levene 2011: 286.

<sup>237</sup> Earl 1967: 11-43; Edwards 1993: 4; cf. 24-32 on the importance of morality in the self-regulation of the Roman political and social élite. Cf. Mellor 1999: 56.

<sup>238</sup> Edwards 1993: 4.

<sup>239</sup> Levick 2015: 25.

nuper diuitiae auaritiam et abundantes uoluptates desiderium per luxum  
atque libidinem pereundi perdendique omnia inuexere (*praef.* 12).

Lately riches have brought in greed, and excessive pleasures a longing  
to ruin ourselves and destroy everything through soft living and  
wantonness.

*pereundi perdendique omnia* obviously refers to more than just personal immorality:  
in the context of the author's preceding comments about decline of Rome's fortunes  
and the *mala* of his own times, this is clearly another allusion to political strife and  
civil war. Livy believes that a return to ancient moral standards would cure Rome of  
its ills, including its recurrent political turmoil; he doubts, however, that his degenerate  
contemporaries have the fortitude or even the desire to emulate the conduct of the  
*maiores*. Hence, Romans can bear neither their *uitia*, which are destroying them, nor  
their *remedia*, a resumption of antique *disciplina* for which they have no stomach,  
corrupted as they are by luxury and greed. Since the purpose of the *AUC* is to provide  
moral guidance so that Rome might recover its morale and its former stature, it may  
legitimately be described as having a political purpose – nothing less than the  
rehabilitation of the *res publica*. Rather than writing for an apolitical audience,  
therefore, Livy seems to have intended his moral lessons for the men in positions that  
would allow them to effect the hoped-for change in Rome's state of affairs.<sup>240</sup> On this  
matter Walsh's assessment is quite astute: the purpose of Livy's moralising is

to demonstrate to posterity that national greatness cannot be achieved  
without the possession, especially by the leading men of the state, of  
the attributes which promote a healthy morality and wisdom in external  
and domestic policies.<sup>241</sup>

Politics is therefore a central concern of the *AUC* insofar as its purpose is to illuminate  
the causes for both Rome's success and more recent failing. The decline of morals is  
specifically equated with the political collapse of the *res publica*. The revival of the  
*res publica* through the restoration of an effective political order could only be brought  
about by a widespread reversion to *mos maiorum*.

Livy is not an apolitical author. His experience of politics, or rather of political  
discord, during his formative years was overwhelmingly negative, but his response  
was not to turn his thoughts elsewhere, content to leave politics to the professionals,

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<sup>240</sup> Duff 2003: 86; *contra* Marincola 1997: 29.

<sup>241</sup> Walsh 1961: 66; cf. 40.

as it were, or to Rome's new princeps. During a period of uncertainty, with the memory of war and proscriptions foremost in his mind, Livy set out to produce a history that would simultaneously illustrate how Rome had reached its current straits and emphasise the *remedia* to its troubles. Thus, the *AUC* is Livy's response to the political upheaval of the late Republic, his own way of doing his 'manly part' (*praef.* 3: *pro uirile parte*) to resist *discordia*;<sup>242</sup> its conception, its narrative arc, and its didactic aims are all coloured by contemporary political considerations. Livy's history therefore deserves to be taken more seriously as a political text than it often has hitherto.

## **Conclusion**

One person who has taken the political aims of the *AUC* seriously is Vasaly, whose recent book *Livy's Political Philosophy: Power and Personality in Early Rome* (2015) amply demonstrates how fruitful a study of the *AUC* as a political text can be. Vasaly shows that Livy's first pentad, which serves as a preliminary *archaeologia* to his history of Rome, is concerned with politics, and specifically the politics of the late Republic:

In the first pentad, unlike in subsequent books, the problems for which Livy envisioned his history as providing a *remedium* were not those of the Augustan future but of the recent republican past[.]<sup>243</sup>

In the chapters that follow, it will be shown that the distinction Vasaly draws between the political lessons of Livy's first pentad those of his later books is more apparent than real. Books 21-45 are just as concerned with the politics of the late Republic, and with offering *remedia* to the *discordia* that characterised it. In these books Livy offers his reader a vision of the *res publica* as it was at its height, which is to say as it should be, and could be again if the lessons of the *AUC* were absorbed. As Chapters 2 and 3 explain, Books 21-45 reveal how the Romans' ancestors maintained *concordia* and, in general, succeeded in suppressing *discordia*. They therefore provide a model for good government from Rome's past that would solve the political problems of the present, if only it were emulated. Livy's vision of this stage in Roman history is embellished, to be sure – from the analysis that follows it will be clear that the historian

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<sup>242</sup> Vasaly 2015: 122.

<sup>243</sup> Vasaly 2015: 123; see 9-35 for the first pentad as *archaeologia*.



has himself suppressed instances of *discordia* on occasion, so as not to detract from the overall impression of peaceful and effective government. But even so, as Chapter 4 will illustrate with two revealing case studies, these books do occasionally offer hints at the political turmoil to come later.

## **Chapter 2**

# **Creating *concordia***

### **Introduction**

This chapter examines how *concordia* is achieved and maintained in the *res publica* as Livy depicts it in Books 21–45. Responsibility for maintaining the political order of the Roman state belonged primarily to its magistrates, and as such they are the focus of much of this study. These office holders were drawn from a class of leading citizens who constituted the political élite of Republican Rome, who collectively formed the state’s senate, and to whom Livy often refers as *principes ciuitatis*, the leading citizens of the state. Even when they did not hold a magistracy, individual *principes* could influence public affairs, for better or for worse, so they too are discussed alongside the magistrates. In this chapter and the next, the discussion of the leadership of the *res publica* is divided into two parts, one focusing on high office holders such as consuls, dictators, censors, and on the men who competed for these offices (section 2.1 in this chapter), the other on the tribunes of the plebs. This distinction reflects the unusual rôle played by the tribunate in Roman politics. Traditionally, the tribunate of the plebs has been viewed as a particular source of *discordia*, because of its disproportionate powers and competences and because of its origins in the strife between the plebeians and patricians in the formative years of the *libera res publica*. The tribunes’ rôle in the generally peaceful age that Livy describes in Books 21–45 therefore merits special consideration (section 2.2). This chapter reveals that the tribunate did in fact play a major part in creating and maintaining *concordia* and effective government in this part of Livy’s history. The chapter also considers the nature of political oratory in Livy, and discusses oratory’s rôle in upholding the *concordia* that generally prevails in his third, fourth, and fifth decades.

### **2.1 Magistrates and leading citizens**

Livy’s history instructs through exemplarity, and by far the most common exemplar in his history are men who belong to the very pinnacle of Roman society, the political

élite that governs the city and its empire.<sup>244</sup> This fact by itself reveals much about the *res publica* envisaged by the *AUC*: this is a state in which the people most worthy of consideration, most worth emulating, are – not coincidentally – its leaders. ‘Ordinary’ people do play a part in the political narrative every so often, more commonly in the early books where characters from humble backgrounds often stand for, and even speak for, the plebeian masses as they struggle for a place in the state that is worthy of a free citizenry.<sup>245</sup> In Books 21–45 such figures are very rare, which reflects the high degree of *concordia* between leaders and masses in these books in comparison to the earlier ones. When they do feature, however, they can be no less exemplary than their élite counterparts. Two figures stand out from Livy’s later books: Hispala Faecenia in the Bacchanalia Affair at 39.9–14, and Sp. Ligustinus in the controversy over the re-enrolment of veteran centurions at 42.32.6–35.2. The freedwoman and ‘renowned whore’ Hispala proves the truth of Livy’s statement that she ‘did not deserve’ her station in life by bravely revealing the Bacchanalian ‘conspiracy’,<sup>246</sup> for which she is rewarded with a vast sum of money and her autonomy, with the stain of her past life formally removed (39.19.3–6). Ligustinus, one of the veteran *primi pili* centurions who have resisted being enrolled at a lower rank, who admits to being so poor that he own only one *iugerum*, becomes the person responsible for ending the impasse between the consuls and the centurions when he gives a speech (42.34) in which he urges his fellows to submit to the consuls and senate. Both of these humble figures exemplify duty to *patria*, and for this quality both are no less worthy of emulation than any of the great *imperatores* in the *AUC*. But both characters also demonstrate another trait: humility before the consuls and the authority they embody. Hispala is overcome with fear and awe in the presence of the consul Postumius and his badges of office (39.12.2, 5);<sup>247</sup> Ligustinus emphasises his subservience to his superiors and calls on his fellow centurions to emulate him in bowing to the power of the consuls and senate (42.34.13–15). Thus, these most virtuous of ‘ordinary’ characters, while exemplary in their own right, are additionally exemplary in that they

<sup>244</sup> The exemplarity of magistracy, especially in Livy, is the subject of Haimson Lushkov’s (2015) recent contribution to the study of *exempla* in Roman literature. Jaeger 1997, Feldherr 1998, and Chaplin 2000 remain fundamental; see also Langlands 2011; Roller 2011; and relevant sections in Vasaly 2015. On exemplarity in Roman culture more generally, see Hölkeskamp 2003; Roller 2004.

<sup>245</sup> See Vasaly 2015: 110–12, and 96–121, 132–39 on the *plebs/populus* in the first pentad more generally.

<sup>246</sup> 39.9.5: *scortum nobile libertina Hispala Faecenia, non digna quaestu cui ancillula adsuerat...*

<sup>247</sup> On Hispala’s awe and terror in the face of magisterial *auctoritas*, see Haimson Lushkov 2015: 23–4.

direct the reader's attention back to its proper focus: the leading men of the state and above all the magistrates.

This part of the chapter considers the proper rôle of a political leader in Books 21-45. Rather than analysing the whole range of magistrates and *principes* that dominate Livy's account of domestic affairs, it follows Livy's own practice by offering an exemplar who personifies the best characteristics of a Roman leader. The figure who stands above the rest for his qualities and his practice of leadership is Q. Fabius Maximus Verrucosus, whose responsibility for preserving his *patria* from Hannibal in the dark, early days of the Second Punic War attests his worthiness as a subject of study.

### 2.1.1 Fabius Maximus at home

Fabius Maximus was – and indeed still is – best known for the strategy he employed against Hannibal and which earned him not only the eternal renown of saving his country but the 'title' by which he is better known: *cunctator*, 'the Delayer'.<sup>248</sup> There is no denying the importance of Fabius' generalship in the first half of the third decade of the *AUC*, nor that his generalship is one of the qualities that makes him such an effective Roman leader, but Fabius' rôle as a commander has often unfairly eclipsed his rôle in domestic affairs. Yet here too he manifests the highest qualities of Roman leadership.

After the Roman defeat at Lake Trasimennus, Livy's narrative focuses on the dictator Fabius and his efforts to restore order to the *res publica*. From the outset, Livy depicts Fabius as ideally suited to this time of crisis. The dictator's conduct at home and in the field is directly opposed to that of the fallen consul C. Flaminius.<sup>249</sup> Flaminius had entered his second consulate, towards the end of Book 21, in what the senators regard as a state of war with both the senate and the gods (21.63.6). Because he believed his enemies would try to falsify the auspices and hinder him from taking up his consulate, Flaminius secretly left the city without taking the customary vows

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<sup>248</sup> This title, and the renown associated with Fabius' achievement, are famously encapsulated by a fragment of Ennius' *Annales*, 363-5 Sk. This fragment's impact on Livy is considered below, at 2.3.1, and again at 4.2.2. Its rôle in historiography is considered by Elliott 2009 and Roller 2011.

<sup>249</sup> This is part of the antithesis between the perennially cautious Fabius and the 'rash commanders' of Books 21-2, the others being Ti. Sempronius Longus, M. Minucius, C. Varro: see Will 1983; Levene 2010: 170-2. The confrontation between Fabius and two of these, Minucius and Varro, is the topic of Chapter 4.2. Flaminius is discussed in Chapter 3.1.3.

or fulfilling his religious obligations (21.63.5-9). The senate voted to recall the wayward consul, but he disregards the messengers sent to bring him back and enters his consulate outside of Rome (21.63.11-15). The results of his impiety are made clear at the Battle of Lake Trasummenus.<sup>250</sup>

When Fabius returns to Rome from Umbria on receiving word that he has been made dictator, he immediately convenes the senate (22.9.7). Despite the disastrous state of Rome's armies, the dictator's first order of business is to put the state's religious affairs in order. He convinces the senate that Flaminius' greater fault was his neglect of the rites and auspices, rather than his *temeritas* or his ignorance.<sup>251</sup> He suggests that the Sibylline books be consulted for the best way to propitiate the gods and restore Rome's relationship with them (22.9.8). The measures taken in response to this are described in meticulous detail at 22.9.7-10.10, and this detail conveys the care taken by the Romans to attend to their state's religious needs, following the advice of Fabius.

It is only after the supplications and propitiations have been performed that the dictator turns to war and public affairs (22.11.1: *ita rebus diuinis peractis, tum de bello deque re publica dictator...*). As before, Livy describes Fabius as calling on the senate to decide these matters, referring the question of the enrolment of new legions to face the Carthaginians: 'concerning the war and public business, the dictator referred it, so that the fathers should decide by what legions and by how many the victorious enemy should be opposed' (22.11.1: *de bello deque re publica dictator rettulit, quibus quotue legionibus uictori hosti obuiam eundum esse patres censerent*). After the recruitment of new troops, the dictator proceeds with other preparations for facing Hannibal (22.11.2-5).

The antithesis between Fabius and the dead consul Flaminius is profound. Fabius prioritises the gods where Flaminius neglects them; Fabius works with the senate while Flaminius works against them. The priority the dictator gives to this matters reflects his accurate understanding of the cosmic order on which Rome's prosperity rests: first *pax deorum*, without which Rome cannot prosper, certainly not in war, and then *concordia*, without which Rome cannot govern itself.<sup>252</sup> The

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<sup>250</sup> On Flaminius' impiety as the cause of the Roman defeat, see Bruckmann 1936: 65-70; Levene 1993: 38-42.

<sup>251</sup> 22.9.7: *ab dis orsus, cum edocuisset patres plus neglegentia caerimonium auspiciorum<que quam> temeritate atque inscitia peccatum a C. Flaminio consule esse[.]*

<sup>252</sup> On *pax deorum* and Roman explanations of military defeat, see Rosenstein 1990.

dictator's dealings with the senate exemplify *consultatio* and *consilium*, the business of consulting/counselling the senate that was one of the main duties of a consul. To the Roman mind, the etymological link between *consultatio* and *consul* reflected the proper relationship between the senate (and people) and the paramount magistrates; as Varro (*Ling.* 5.80) puts it, a *consul* is someone *qui consuleret populum et senatum*, 'who would consult the people and senate'.<sup>253</sup> A *dictator*, on the other hand, was under no obligation to do anything of the sort, for as the title implies a dictator need only speak his will for it to be done. Fabius, however, maintains a more equal relationship with the senate despite the prerogatives of his office. Indeed, the combination of authoritative advice with his use of persuasion and deferential requests to guide the senate reveals, and, for Livy's audience, reinforces the proper way in which a magistrate ought to deal with the senate.

Fabius' strategy of *cunctatio* makes the war more even, until the election of C. Terentius Varro to the consulate. This man's aggression leads the Romans to another disastrous defeat.<sup>254</sup> When rumours of the Battle of Cannae reaches Rome they provoke such despair and panic that Livy confesses himself unequal to relating it (22.54.8, cf. 7, 9-11). But once again the leadership of Q. Fabius rescues Rome from the brink of chaos. This time, he acts without holding public office: he simply counsels the senate to send out riders to gather accurate information about the enemy's position and intentions (22.55.4-5) – thereby addressing the military situation – and then suggests that the senators themselves quell the *tumultus ac trepidatio* afflicting the city (22.55.6-8) – thereby addressing the domestic situation. Characteristically, his wisdom persuades the entire senate, which votes unanimously to enact his advice (22.56.1). Here again Fabius demonstrates the proper rôle of a leading citizen in relation to the senate: he offers authoritative and wise advice, and uses persuasion to guide his fellow *patres* towards the best course of action.

Fabius is not a perfect leader. In the middle chapters of Book 22, as Chapter 4.2 of this thesis will show, he utterly fails to prevent his policy of *cunctatio* from losing the support of the public, and thus paves the way for the Roman defeat at Cannae. On a later occasion Fabius effectively usurps an election over which he himself, as a consul, is presiding (24.7.12-9.3), refusing to allow the two candidates

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<sup>253</sup> On consuls and *consilium/consultatio*, see Haimson Lushkov 2015: 64-5.

<sup>254</sup> The campaign to undermine the Fabian strategy and its consequences is the focus of Chapter 4.2.

chosen by the *centuria praerogatiua* to be elected consuls and even using his lictors to silence one of them when he protests (24.9.1). One suspects that, had this been done by any other character, Livy would at least have suggested that *libertas populi* had been usurped. To Fabius, however, he allocates a lengthy speech in which Rome's saviour justifies his retention of the consulate as a necessity of war, after specifically disclaiming any attempt against *libertas* (24.8). This smacks of special pleading by the historian, but it only serves to underline the point made in this section.<sup>255</sup> Fabius Maximus is the foremost of the *principes* in Books 21–45, whose talents as a soldier and general are matched by his conduct at home. He serves as an exemplar of the *pietas* and *consilium*, treating with the senate with in a way that ensures that his wisdom is followed without in any way debasing himself by forcing the *patres* to obey him. His respectful attitude sustains the utmost *concordia* between himself and the senate, to the benefit of the *res publica*.

## **2.2 Tribunes of the plebs**

The *AUC* has had a profound influence on subsequent perceptions of the course of Roman political history. Perhaps in no area is this influence more apparent than in modern reconstructions of the history of the tribunate of the plebs. In the traditional periodisation of the Roman Republic, the initial (509–287 or 367) and final eras (133–49 or 43 or 31), characterised by political and social conflict, correspond to periods of contentious and disruptive tribunician activity; the intermediate period (367 or 287–134), on the other hand, is distinguished in part by the more peaceful rôle that the tribunes played in affairs.<sup>256</sup> In this ‘Era of Quiescence’, as Brunt memorably called it,<sup>257</sup> it is supposed that most tribunes were content to serve the interests of the senatorial aristocracy (of which many were now part); only rarely did a tribune use his powers to disrupt the political order, and none succeeded in provoking upheaval

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<sup>255</sup> Cf. Livy's variation on the anecdote in which Fabius was ordered to dismount by his son, the consul of 213, in recognition of the proper respect owed even by a father to the magistracy. In Claudius Quadrigarius' earlier version (Gell. *NA* 2.2.13 = *FRH* 24 F57), Fabius simply obeyed and praised his son's sense of decorum. In the *AUC*, however, Livy specifically absolves the father of any wrongdoing by failing to dismount, having him declare that he was testing his son (22.44.9–10). On the variants in this tradition, see Haimson Lushkov 2015: 38–45.

<sup>256</sup> See Taylor 1962: 19, for the correspondence between this periodisation and tribunician activity.

<sup>257</sup> Brunt 1971a: 60–73

comparable to the tribunician disturbances of the early and late Republic.<sup>258</sup> The idea of the docile tribunate of the middle Republic has not gone unchallenged: Lily Ross Taylor suggested long ago that the rebirth of the politically radical tribunate with the Gracchi was anticipated by a series of forerunners in the preceding decades.<sup>259</sup> Some subsequent treatments, while recognising the assimilation of the tribunate into the oligarchic system of the middle Republic, have stressed that, far from being passive tools of the political élite, the tribunes were actively involved in maintaining the élite's rule, conferring popular legitimacy on their decisions through their legislative powers and regulating their internal contests with their powers to prosecute and defend élite citizens and block contentious bills.<sup>260</sup> Recently, Peter Williams has argued that the tribunate also continued to perform what he identifies as its 'primary function – to act in the best interests of the People' more often than is usually recognised.<sup>261</sup> These contributions add nuance to the traditional account of the tribunate – Williams in particular stresses that tribunician activity need not be overtly opposed to the nobility or the senate to be understood as upholding popular interests – but they do not undermine the overall narrative of the office as one that was radical, even revolutionary, in origin, became normalised in the course of the third and second centuries, before rediscovering its radical potential with the Gracchi.

Unsurprisingly, this narrative of the tribunate's evolution, necessarily dependent on Livy as the most detailed source for the middle Republic, reflects the changing rôle of the tribunate in his surviving books. In Livy's early books, the tribunes as leading figures on the plebeian side of the 'Struggle of the Orders' are a frequent source of political and social upheaval.<sup>262</sup> In the third, fourth, and fifth decades, tribunes play a more varied rôle in politics, and only rarely are they depicted

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<sup>258</sup> This is essentially the thesis of Bleicken's 1955 study of the tribunate in its 'classical' period, 287-133 B.C.; the idea was not novel, however, and its wide currency is evident from the frequency with which it features in general treatments of Republican politics, e.g. Taylor 1899: 176, 216, 235; Mommsen 1920: 312-14; Cary 1935: 116-7; Scullard 1961: 104, 322-3; 1982: 7, 25; Brunt 1971a: 64-7; Meier 1980: 117-28; cf. specific treatments of the tribunate, e.g. Brunt 1966: 7-8; Hölkeskamp 1990; Badian 1990: 458.

<sup>259</sup> Taylor 1962; accepted by e.g. Brunt 1971a: 65-6; Meier 1980: 128-9; Crawford 1992: 94-5; Lintott 1999: 208.

<sup>260</sup> Feig Vishnia 1996: 201-3; Lintott 1999: 206-7; these functions were recognised by Mommsen 1920: 313.

<sup>261</sup> Williams 2004: 282 and *passim*.

<sup>262</sup> Tribunes are especially prominent as the causes of *discordia* in Livy's account of the nascent *libera res publica* in Books 2-5, which begins with an ominous reference to the seemingly innate propensity of the plebs 'to be stirred up by tribunician tempests' (2.1.4: *agitari...tribuniciis procellis*): see Vasaly 2015: 96-7, 134-5.



in an overtly negative light. But while the traditional take on the history of the tribunate accords with the overall impression given by Livy, it is also true, as Williams stresses, that the ancient account of the mid-Republican tribunate is more varied than many modern histories admit. Taken together, however, these traditional and ‘revisionist’ perspectives on the history of the tribunate do do justice to their Livian source material.

What modern historians rarely acknowledge is that the *AUC* may not necessarily reflect Roman history, or even Roman historical tradition as such, so much as Livy’s efforts to craft a compelling and coherent narrative from the material that was available to him. Ernst Badian is a rare exception, recognising that the apparent change in the tribunate’s character from the early to the middle Republic reflects Livy’s uneven treatment of the office.<sup>263</sup> Badian attributes this unevenness to the Patavine’s tendency to focus on serious conflicts and crises in his account of domestic affairs. Whereas the tribunate of early Republic, as both a subject and a source of serious contention, supplied a lot of interesting material for Livy’s narrative, ‘There was nothing so exciting in tribunician history in the Middle Republic’.<sup>264</sup> Hence, in Badian’s view, Livy’s treatment of the tribunate in his later decades is characterised a general ‘lack of interest’, in both the tribunate’s everyday functions and in the conflicts in which tribunes were involved.<sup>265</sup> But this explanation of Livy’s handling of the tribunate feels insufficient, especially as the historian does in fact treat tribunician controversies in some detail in his third, fourth, and fifth decades. These books still display an interest in the tribunate and its rôle in the *res publica*, as the following discussions will show. An alternative explanation is therefore needed to account for the differences between Livy’s depiction of the tribunate in his earlier and in his later books, and one has been offered by another historian who is conscious of Livy’s impact on modern perceptions of the middle Republic. As the Introduction mentioned, Mouritsen argues that the *AUC* consistently downplays the political conflicts of the middle Republic in order to present the period as one of unmatched *concordia*.<sup>266</sup> The analysis that follows demonstrates that this is true of Livy’s depiction of the tribunate, too. The contrast between the early and the later tribunate

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<sup>263</sup> Badian 1996: 187.

<sup>264</sup> Badian 1996: 187.

<sup>265</sup> Badian 1996: 187-190.

<sup>266</sup> Mouritsen 2017: 108-10.

in the *AUC* is deliberate, designed to illustrate how the institution could function in a unified and morally-upright *res publica*, despite its origins in plebeio-patrician discord.<sup>267</sup> Livy's account of the mid-Republican tribunate is therefore not a disinterested distillation of Roman historical tradition, as historians have tended to assume. Instead, it is carefully contrived to present the tribunate in a largely positive light, intentionally underemphasising – but never completely effacing – its capacity to generate political conflict.

Although generally more positive than in his account of the early Republic, Livy's portrayal of tribunes in Books 21-45 is by no means uniform (any more than his depiction of them in the first decade, as Vasaly has shown). For the most part, the tribunate functions as a regular organ of state, exercising its legislative and legal powers at the behest of and in deference to the senate. Nevertheless, the problematic nature of the tribunate as a magistracy with wide-ranging and almost unrestrained powers is never entirely forgotten, as individual tribunes periodically provoke *discordia* by exercising their powers against the will of the senate. In most of these cases, *concordia* is swiftly restored along with the supremacy of the senate's *auctoritas*, but on a few portentous occasions the tribunate's extraordinary powers provoke crises that prove more difficult to resolve. Overall, however, Livy presents the tribunate as a magistracy that served the interests of the *res publica* in the years covered by Books 21-45, in spite of the office's seditious origins and its seemingly inherent propensity, never far from sight even in these books, for abuse by self-serving and reckless men.

### 2.2.1 The functions of the tribunate

The abuse of tribunician powers will be discussed at length in the next two chapters. The rest of this section offers an overview of the regular functions of the tribunate in Books 21-45. Characteristically, the historian does not offer the kind of institutional overview of the tribunate that is provided by Cicero in the *De legibus* (3.19-26), so

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<sup>267</sup> It is worth noting too that the difference in the way the tribunate comes across in the earlier and the later books is due in part to the change in the pace of Livy's narrative. Books 21-45 relate half a century of Roman history, whereas Books 2-10 cover more than two centuries in less than half the space. Inevitably, tribunician controversies loom larger in Livy's succinct account of the early Republic, especially since those controversies are concentrated in Books 2-6, than they do in his later books, among which they are much more widely dispersed.

any understanding of the general characteristics of the magistracy must be distilled from the narrative as a whole.

The tribunes of the plebs performed a range of functions in the Republic. Historically, the most important of these functions was to create laws. Before the domestication of the consulate in the first century, which saw consuls spend most of their time at home instead of campaigning abroad as their predecessors had done, legislation was monopolised by the tribunes, who appear to have been responsible for most of the laws passed in the third and second centuries.<sup>268</sup> Tribunes also played a prominent part in judicial proceedings. In the middle Republic, before the establishment of permanent *quaestiones*, these typically consisted of a series of public hearings in the form of *contiones* called by tribunes for the purpose of making accusations; these hearings might be followed by a formal trial, again conducted in public, if the prosecution's case was sufficiently strong. The tribunes of course retained the *ius auxilii*, their ancient right to aid any citizen who exercised his right of *prouocatio* and appealed for help against a magistrate, so tribunes served as advocates for defendants as well as acting as prosecutors. The tribunes' *auxilium* could be invoked in other situations, too, and it often drew them into disputes within the senate or between magistrates. As a consequence of this and of the equally important *ius intercessionis* – the power to veto legislation, tribunician decrees, senatorial resolutions, even the election of magistrates – the tribunate performed an important regulatory function in Roman politics, with tribunes often acting as the guardians of *mos maiorum* and the arbitrators of the political élite's contests over prestige and power.

Livy's narrative reflects the tribunate's historical functions. In Books 21-45, tribunes of the plebs are mentioned most frequently in the context of legislation. Livy describes several tribunes' *rogationes* in detail, usually because they arouse controversy.<sup>269</sup> But for the most part he is content merely to note, often in a single

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<sup>268</sup> Taylor 1966: 60; Lintott 1987: 41; Sandberg 1993: 89-92; 2000: 135 and *passim*; cf. Williamson 2005: 16-17. It must be admitted that the record of mid-Republican legislation is by no means complete (Sandberg 2000: 123-4; Meyer 2005; Stevenson 2007: 170; *contra* Williamson 2005: esp. 6-16, whose analysis of Roman law-making seems to rest on the assumption that the record is largely complete), but the impression given by what is likely only a fraction of the laws passed in the third and second centuries probably reflects the overall proportion of *plebiscita sensu stricto* and non-tribunician *leges*.

<sup>269</sup> Detailed accounts of *rogationes*: 22.25.10-26.5; 27.20.11-21.4; 34.1.1-8.3; 38.54.2-12; 45.35.4-39.20.

sentence, that a tribune or tribunes passed a law,<sup>270</sup> or that the tribunes were asked by the senate to put a bill to the *concilium plebis* on their behalf.<sup>271</sup> Tribunes appear almost as often when exercising their right of *intercessio*, intervening in a range of political matters, from *rogationes*, to elections, to decrees of their fellow tribunes or of other magistrates or the senate.<sup>272</sup> Together, *rogationes* and *intercessiones* account for over half of the appearances of tribunes in Books 21–45. Tribunes also feature in judicial contexts,<sup>273</sup> or when a citizen appeals for their help,<sup>274</sup> but while both situations are fairly common they are far less so than either *rogationes* or *intercessiones*. It is comparatively rare for tribunes to appear in situations other than these, although Livy does show them performing a range of other functions.<sup>275</sup> Thus, *rogationes*, *intercessiones*, judicial proceedings, and responding to appeals make up the most visible activities of the tribunes in the *AUC*, just as they seem to have done in at least the late Republic.

The tribunate performs the same range of functions in Livy's later books as it does in his account of the early Republic. But while its functions are the same, its rôle in public affairs is markedly different. In the earlier books, particularly in Books 2–6,

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<sup>270</sup> 21.63.3–4; 23.21.6; 32.29.3–4; 33.25.7; 33.42.1; 38.36.7–9; 40.44.1; 41.6.2–3; 42.19.1–2; 42.22.3; 43.16.6–8.

<sup>271</sup> 25.5.8; 26.2.5–6; 26.21.5; 27.5.7; 30.27.3–4; 30.41.4; 34.53.1; 35.7.4–5; Livy dedicates slightly more space to bills that arise out of irregular or contentious circumstances: 26.33.10–14; 27.5.16–17; 30.40.14–16 (enacted at 30.43.2–3); 31.50.8–11 (two *rogationes*). At 29.16.6 a *rogatio* is proposed in the senate but not passed.

<sup>272</sup> Tribunician *intercessiones* against *rogationes*: 34.1.4 and 34.8.2; 38.54.5, 11; 41.6.3; 45.21.3–8; during elections: 25.2.6–7; 27.6.2–5; 32.7.8–10; against decrees of tribunes: 38.52.9–11; against other magistrates: 30.40.9–10; 32.28.3–8; 33.32.1–2; 38.60.4–7; 43.16.5; in senatorial discussions: 31.20.5–6; 33.25.6; 35.8.9; 36.39.6–10; 38.47.5; 39.4.3–4; 39.38.9–10; 45.15.9; at 32.7.4 P. Porcius Laeca forbade L. Manlius Acidinus entering the city in an *ouatio*, despite a senatorial decree granting him the right to do so. Some *intercessiones* take place in judicial contexts (hence there is some overlap with the cases listed here and in the following footnote): 24.43.3; 38.52.9–11; 38.60.4–7.

<sup>273</sup> 24.43.2–3; 25.3.13–19; 26.2.7–3.9; 29.22.7; 29.37.17; 37.57.12, 58.1; 38.50.5–53.7; 38.56.2, 6–13; 38.60.3–7; 41.7.5–10; 43.8.2–3, 9–10; 43.16.9–16.

<sup>274</sup> 26.3.8; 27.8.3; 27.8.8–10; 28.45.5–7; 33.42.4; 34.56.9; 36.3.5; 37.51.4; 38.52.8; 38.58.3, with 38.60.3–7; 40.29.12; 42.32.7–8.

<sup>275</sup> The tribunes' ability to hold *contiones* gave them the right to speak in public whenever they chose. Thus they often serve as orators in the *AUC*, even outside of the four main contexts in which they appear (which themselves often called for speeches), e.g. holding *contiones* in support of a candidate for the consulate (22.34.3–11, on which see Chapter 4.2.2); speaking against a consular *rogatio* to declare war (31.6.3–6); attacking a general's conduct abroad (43.4.6). Tribunes could also summon people to speak at their *contiones*, as M. Antonius does when he calls on L. Aemilius Paulus to present an account of his exploits (45.40.9); this also allowed tribunes to preside over public debates, such as that over Paulus' triumph (45.36.2, 3). Tribunes of the plebs also initiate a motion in the senate (22.61.7), serve on the board of the *tresviri mensarii* (23.21.6) and on the legation sent to investigate and if necessary arrest P. Scipio (29.20.4–11), receive, along with the *praetor urbanus*, Hispala Faecenia's petition for a *tutor* (39.9.7), issue a proclamation threatening the consuls with a fine (42.21.4), and investigate the conduct of a levy (42.33.1–2).

the tribunes' powers are an almost constant source of *discordia*.<sup>276</sup> Tribunician attempts to legislate frequently provoke strife with the *patres*, and although patrician resistance to these *rogationes* is not always presented as just or fair, the bills and their sponsors tend to be cast in a negative light regardless of the justice of their cause. Livy repeatedly portrays tribunician legislators as unpatriotic, opportunistic, and motivated by ambition and self-interest.<sup>277</sup> As for the laws themselves, the historian naturally treats agrarian laws, which Livy calls the 'poison' of the tribunes (2.52.2: *suo ueneno, agraria lege*), as a perennial source of *discordia*.<sup>278</sup> But even when the laws proposed are constructive and contribute to the development of the mature and stable *res publica* described later in the *AUC*, tribunes' attempts to legislate tend to generate discord. The Licinio-Sextian *rogationes* provide a striking case in point. The laws passed by the tribunes do much to ease plebeio-patrician tensions in the long term, in particular the admission of plebeians to the consulate, which marks the birth of the mixed aristocracy that will lead Rome to greatness in the years to come. But the contests over the passage of these laws all but paralyses the Roman state for years.<sup>279</sup> The tribunes' ability to mount prosecutions is, if anything, depicted in a worse light than their legislative powers. Livy represents tribunician prosecutions as vindictive, unjust, and often harmful to the *res publica*.<sup>280</sup> Serious harm is done to Rome by the two most famous prosecutions in the early books, those of Coriolanus (2.35.2-6) and Camillus (5.32.7-9), in the first case by making an enemy of a brave and cunning soldier, in the second by depriving the Romans of the one man who could have saved them from the Gallic onslaught that soon follows. Of the tribunes' activities in the early books, only the provision of *auxilium* is presented in a largely

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<sup>276</sup> Vasaly 2015: 96; cf. 113-16.

<sup>277</sup> Vasaly 2015: 114; Ridley 1990: 121-2, 126.

<sup>278</sup> 2.42.6; 2.43.3-4; 2.44.1-6; 2.52.3; 2.54.2; 2.61.1-2; 3.1; 4.43.6; 4.48.3-12; 4.52.2-4; 6.5.1-5; 6.6.1; see Ridley 1990: 111-12; Kaplow 2012: 103; Vasaly 2015: 100-1; 113-14. Livy reveals his attitude to agrarian laws in a comment on the first of them, in which he claims that 'never afterwards, even up to times within living memory, were such matters brought up without the greatest upheavals' (2.41.3: *numquam deinde usque ad hanc memoriam sine maximis motibus rerum agitata*); cf. Livy's description of agrarian laws at 6.11.8: *materia semper tribunis plebi seditionum fuisset* ('it was ever the stuff of *seditiones* for the tribunes of the plebs'). This first *lex agraria*, which not only provokes discord but is treated as an attempt at overthrowing the state, is actually proposed by the patrician consul Sp. Cassius (2.41). However, as Vasaly 2015: 113-14 points out, it is the first tribunician land redistribution bill, at 2.43.3-4, that sets the pattern for subsequent *leges agrariae* and 'plants in the mind of the reader an association between agrarian laws and the office of tribune'.

<sup>279</sup> 6.34-42, esp. 6.35.10 and 6.36.1-37.12 on the five-year 'anarchy' and its effects; for overview and comment see Kraus 1994: 268-332; Oakley 1997: 645-61, esp. 647, 650-1 on the 'anarchy'.

<sup>280</sup> See the list of examples discussed by Ridley 1990: 123-6.

positive light. On reflection, this is unsurprising. The ability to appeal for help against a magistrate is an essential aspect of the *libertas* of the Roman people, and it is this, above all, that justifies the existence of the tribunate in the *AUC*. Livy depicts it as the reason for the establishment of the tribunate in the first place: ‘so that there would be sacrosanct magistrates of the plebs’ very own, who had the right to provide aid against the consuls’ (2.33.1: *ut plebi sui magistratus essent sacrosancti, quibus auxilii latio aduersus consules esset*). Later, it is at the heart of the patricians’ offer to restore the tribunate after the tyranny of the decemvirs.<sup>281</sup> By highlighting *auxilium* in his accounts of the tribunate’s establishment and re-establishment, Livy presents it as integral to the magistracy and almost synonymous with it. It is little wonder that, of all the tribunes’ functions, the provision of *auxilium*, as the guarantee of the people’s *libertas*, itself essential to Rome’s status as a *libera res publica*, is treated positively, especially in light of the genuine injustice to which the plebeians are often subjected in the early books.<sup>282</sup> And the plebeians are not the only beneficiaries, for the *patres* are quick to understand *auxilium*’s potential to help them, and the state as a whole, in the face of tribunician threats and tumults.<sup>283</sup> By comparison, the other activities of the tribunes occupy a far more pernicious place in the Livy’s account of Rome’s early history. Yet, those same activities rarely provoke *discordia* in Books 21–45. With a few notable exceptions that will be discussed in later chapters, most tribunician activity is carried out without controversy and without inviting authorial comment.

### 2.2.2 The tribunes’ contribution to *concordia*

There is therefore a pronounced change in the tribunes’ rôle as Livy’s narrative progresses, and the reason for this change is clear enough. Throughout these later

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<sup>281</sup> 3.45.8; 3.48.9; 3.53.4, 6; 3.55.6.

<sup>282</sup> The positive attitude towards *auxilium* expressed by Livy appears to have been shared by all Romans. Even Sulla is said to have left the tribunate its *ius auxilii* after limiting its other powers, as the character of Quintus, inveterately opposed to every other facet of *tribunicia potestas*, notes with approval in Cic. *Leg.* 3.22.

<sup>283</sup> N.B. 4.48.13–14: *in eius potestatis [sc. tribunicii auxilii] fidem circumuentam rem publicam, tamquam priuatum inopem, confugere; praeclarum ipsis potestatique esse non ad uexandum senatum discordiamque ordinum mouendam plus in tribunatu uirum esse quam ad resistendum improbis collegis* (‘the besieged state, just like a helpless private citizen, was taking refuge in the steadfastness of this *potestas*; it was splendid for the men themselves and for their *potestas* that there was not greater power in the tribunate for harassing the senate and arousing discord among the orders than for resisting their wicked colleagues.’) These words are attributed to the senators discussing what the *primores patrum* consider their only hope of obstructing a *lex agraria* proposed by the tribunes Sp. Maecilius and M. Metilius; the senators hope that by appealing to the tribunes some of their number will use their *intercessio* to obstruct the *rogatio* (4.48).

books, Livy depicts the tribunes as working in concert with the senate. The senate repeatedly turns to the tribunes to enact its resolutions. Regarding the Locrian affair, for example, the senate resolves to ask two tribunes of the plebs to accompany the legation it is sending to investigate P. Scipio's conduct, so that they can arrest him by virtue of their sacrosanctity (*ac iure sacrosanctae potestatis reducerent*) if necessary (29.20.4-11). Later, upon deciding that the books discovered by L. Petillius should be burned, the senate puts the matter of compensation in the hands of the *praetor urbanus* and a majority of the tribunes (40.29.13). The most frequent service the tribunes perform for the senate, however, is legislating on its behalf. Livy's descriptions of legislation are usually brief and he sometimes omits any reference to tribunes' involvement in *plebiscita*,<sup>284</sup> even though these *plebiscita* can hardly have been passed without at least one tribune's involvement as the *rogator* who presented the bill to the *concilium plebis*.<sup>285</sup> Of the bills in Books 21-45 in which tribunes are explicitly mentioned as *rogatores*, half are brought before the people *senatus consulto*.<sup>286</sup> Admittedly, it is not always clear whether a bill has been drafted by the senate and then passed on to the tribunes to enact, or whether a tribune has simply received senatorial approval for a bill that he drafted; Livy's language occasionally obscures these matters (perhaps deliberately; see the discussion below).<sup>287</sup> But in most instances it is quite clear that the bill in question originates in the senate, and that the tribunes are simply enacting its resolutions. Livy's descriptions of the process

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<sup>284</sup> 25.7.5; 35.20.9; 35.40.5.

<sup>285</sup> See Badian 1996: 187-9.

<sup>286</sup> 25.5.8; 26.2.5-6; 26.21.5; 26.33.11-14; 27.5.7; 30.27.3-4; 30.40.14-16 (enacted at 30.43.2-3); 30.41.4; 31.50.8-11 (two separate *rogationes* resulting from the same *senatus consultum*); 34.53.1; 35.7.4-5; 42.21.4-5; 45.35.4. To these may be added the *plebiscita* passed *ex senatus consulto* that Livy references without mentioning the tribunes who must have brought the bills to the *concilium plebis*: 25.7.5; 35.20.9; 35.40.5.

<sup>287</sup> Only two tribunician *rogationes* are explicitly described as not having been authorised by the senate: Q. Claudius' bill to restrict the capacity of ships owned by senators (21.63.3-4), and C. Valerius Tappo's bill to enfranchise the cities of Formiae, Fundi, and Arpinum (38.36.7-8). A third, on whether to declare peace with Philip V, was brought to the plebs in response to uncertainty in the senate (33.25.6-7), and so apparently also lacked its authorisation. Most of the *rogationes* that are not described as having the senate's backing are contentious or divisive in some way, and as such it may be assumed that Livy omits to mention senatorial approval because they did not receive it: 22.25.10-26.5; 27.20.11-21.4; 34.1.1-8.3; 38.54.2-12; 41.6.2-3; 42.22.3; 43.16.6-8. A few, however, are seemingly uncontroversial, and may have received the prior approval of the senate without the historian noting it: the bill creating a board to deal with a shortage of cash (23.21.6); a bill to establish colonies (32.29.3-4); the law for the election of *tresviri epulones* (33.42.1); L. Villius' law setting minimum ages for magistracies (40.44.1); a bill requiring the censors to issue leases for holdings in the *ager Campanus* (42.19.1-2), on which see Badian 1996: 188-9, who likewise considers it likely to have been promulgated *ex senatus consulto*.

are highly uniform, employing a set of interchangeable terms within a flexible formula, as the following examples demonstrate.

omniumque in unum sententiae congruebant agendum cum tribunis plebis esse...ad plebem ferrent... (26.2.5)

consules iussi cum tribunis plebis agere ut, si iis uideretur, populum rogarent... (30.27.3)

patres...censuerunt (30.40.12)...uti consules cum tribunis agerent ut, si iis uideretur, plebem rogarent... (30.41.4)

mandatumque Q. Cassio praetori cum tribunis plebis ageret ex auctoritate patrum rogationem ad plebem ferrent... (45.35.4)

Each of these cases, along with the other instances spread throughout Books 21-45, combines elements of the same basic formula, which can be expressed thus: (1) the senate decrees or resolves that (2) arrangements should be made (often by consuls or praetors) with the tribunes, (3) if it seems right to them, (4) to bring a *rogatio* before the plebs/*populus*.<sup>288</sup> Whether or not these constructions, with their official sounding vocabulary, ultimately derive from authentic records of these *plebiscita*, they give the impression of regularity and order, of a well-established system in which the tribunate's rôle is to turn *senatus consulta* into law. The remaining instances of bills promulgated *ex auctoritate senatus/patrum* do little to undermine this impression. In four cases it is clear that the *rogationes* originated in the senate because, although Livy does not explicitly state that the senate asked the tribunes to submit these bills to the people, each of them immediately follows an account of a senatorial discussion of the subjects to which it pertains.<sup>289</sup> Q. Aelius Tubero's proposal to establish two Latin colonies does not, but since it is described as being brought *ex senatus consulto* it too may be regarded as the product of a senatorial discussion and resolution (34.53.1). There is only a single exception, in which the tribunes, and not the senate, are explicitly presented as the authors of a bill, which they then present to the *patres* for their approval (35.7.4-5). But this bill, the *rogatio Marcia* concerning the Ligurian

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<sup>288</sup> Cf. 25.5.8: *tribuni plebis, si iis uideretur, ad populum ferrent...* (*senatus* introduced earlier, at 25.5.6, in connection with a different resolution); 27.5.16: *ita decreuit senatus ut...tribuni ad plebem ferrent*; 29.19.6: *agique cum tribunis plebis ut...ferrent ad populum* (the *sententia* of Q. Fabius Maximus, not enacted); 30.40.12, 14: *patres...censuerunt uti...tribuni plebis populum rogarent...* 31.50.8: *senatus decreuit ut...consules, si iis uideretur, cum tribunis plebis agerent uti ad plebem ferrent* (N.B. in this instance *si iis uideretur* refers to the consuls, not the tribunes as at 25.5.8, 30.27.3, and 30.41.4).

<sup>289</sup> 26.21.5; 26.33.12; 27.5.7; 35.7.4-5.



Statellae, is the result of exceptional circumstances, in which the consuls are obstructing any senatorial decree on the matter. The tribunes who sponsor the bill cannot do so in response to a formal request, but they are nevertheless prompted by the *sententiae* of the senators (42.21.4: *hoc consensu patrum accensi*; for further discussion, see below). So, whereas in Livy's first decade the tribunes are frequently at odds with the *patres*, in his later books the tribunes often work for the senate – hence the relative scarcity of conflicts arising out of tribunician activity.

Of course, this all fits in well with traditional views of middle Republican politics. The tribunes' cooperation with the senate has been regarded as evidence that the tribunate served the interests of the *nobiles* during this phase of Roman history. This situation is supposed to have been anticipated by the description of the tribunes as *mancipia nobilium* in the tenth book of the *AUC*. Brunt, for example, referring to the tribunes of the middle Republic, writes that 'Livy (X, 37) called them "chattels of the nobility" in an earlier time, an anachronism that had now come true.'<sup>290</sup> The term 'chattels of the nobility', *mancipia nobilium*, has been the axis on which many discussions of the mid-Republican tribunate have turned.<sup>291</sup> Whether it is cited approvingly or not, it is rarely recognised that the description is not actually one that Livy applies to the tribunate in his own voice.<sup>292</sup> Instead, he attributes the words to the consul L. Postumius Megellus, at a *contio* in which Postumius attempts to justify his refusal to submit a request for a triumph to the *concilium plebis* by implying that any such request would be vetoed by tribunes in the service of his opponents among the *nobiles*.<sup>293</sup> The words cannot be taken as a reflection of Livy's own view of the tribunate (indeed, given their rhetorical context, they should not even be taken as an unprejudiced explanation for the tribunes' opposition to Postumius' triumph).

And in fact the tribunes are not generally portrayed as *mancipia nobilium* in Books 21-45. However little the distinction between the senate and the *nobilitas* that dominated it mattered in reality, in the *AUC* the distinction is important and

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<sup>290</sup> Brunt 1971a: 67.

<sup>291</sup> E.g. Brunt 1966: 7-8; Walbank 1970: 691-2; Hölkeskamp 1990: 452.

<sup>292</sup> A rare exception is Badian 1990: 459, noting that 'it cannot be a general statement about all tribunes'. Hölkeskamp 1987: 156 n. 115 is at least sceptical about the source and hence the accuracy of the quote.

<sup>293</sup> 10.37.6-12; the notorious clause is 10.37.11: *adiciebat se quoque laturum fuisse ad populum, ni sciret mancipia nobilium, tribunos plebis, legem impedituros*[.] Badian 1990: 459 calls this 'one of Livy's sedate little ironies' since it turns out that the patrician Postumius himself 'owns' three of the ten tribunes.

pronounced, especially in regard to the activity of tribunes. Livy rarely presents tribunes as working for *nobiles* in Books 21-45, and when he does he depicts both the tribunes and the *nobiles* they serve unfavourably. In his account of the hotly contested censorial elections of 189 (37.57.9-58.2), Livy indicates that the tribunes P. Sempronius Gracchus and C. Sempronius Rutilus brought a charge of embezzlement against M'. Acilius Glabrio in response to the widespread indignation that this new man's candidacy aroused among the *nobiles*.<sup>294</sup> The impression that the tribunes are motivated by a desire to curry favour with the *nobiles* rather than an interest in justice is reinforced when they drop their prosecution at the third hearing 'since the accused had abandoned his election campaign' (37.58.1: *cum de petitione destitisset reus*). None of the characters in this episode comes out of it unblemished: Glabrio, the tribunes, the *nobiles*, and even the venerable Cato are corrupted by their self-interest and *ambitio*. But the tribunes, by opportunistically using their position to serve the envious *nobiles* by bringing Glabrio to trial, are responsible for turning the election into a major *contentio* that reflects badly on all involved. Another unfortunate collaboration between a tribune and a self-serving *nobilis*, which will be discussed at length below, is that of the tribune M. Aburius and the consul M. Aemilius Lepidus (39.4.1-5.6). On the latter's orders the tribune vetoes a senatorial decree granting a triumph to Lepidus' enemy, M. Fulvius Nobilior. This provokes a debate in which Aburius is admonished by the senators and by his colleague Ti. Sempronius Gracchus for using the tribunate's powers to further a private quarrel. The episode unambiguously characterises Aburius' efforts on behalf of a *nobilis* as an abuse of the tribunate. Significantly, Gracchus makes no reference to the relative merits of Nobilior or Lepidus in his speech to Aburius: he reprimands his colleague not for the side he has chosen in these *nobiles*' feud, but for using his position to participate in their feud in the first place, characterising it as a betrayal of the founding principles of the tribunate. So not only is it rare in the *AUC* for tribunes to act as servants to the *nobiles*, but on those rare occasions when they do it is also harmful to the *res publica* on both a practical and an ethical level. In practical terms it provokes *discordia*, disrupting public affairs to varying degrees, while in ethical terms it represents a

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<sup>294</sup> 37.57.12: *id cum aegre paterentur tot nobiles, nouum sibi hominem tantum praeferri, P. Sempronius Gracchus et C. Sempronius Rutilus, <tribuni plebis,> ei diem dixerunt...* ('Since so many *nobiles* took offence that a new man should be so far preferred to themselves, P. Sempronius Gracchus and C. Sempronius Rutilus, tribunes of the plebs, set a trial date for him...').

prostitution of public office to private interests, thereby undermining the freedom of the state from the influence of powerful individuals. Given Livy's invidious portrayal of tribunes who work for *nobiles*, collaborations between tribunes and senate, which the historian often presents positively, should not be read as evidence of the tribunate's subjection to the nobility.

The simplest explanation for the tribunes' willingness to be directed by senate is that it is a manifestation of the deference owed to *senatus auctoritas*. This would have been quite obvious to Livy's Roman readers, in whom respect for the moral authority of the senate was culturally ingrained. The readiness of the tribunes to obey *senatus consulta*, most visibly in the promulgation of laws on the senate's behalf, must have seemed so natural to the *AUC*'s original audience as to require no explanation. There are, however, several moments in the *AUC* which illustrate tribunician deference to *senatus auctoritas* more explicitly.

On these occasions, Livy portrays tribunes as acting, unprompted, out of respect for *senatus auctoritas*, rather than merely obeying the *senatus consulta*. Sometimes this entails simply using their powers in a way a manner pleasing to the senate. At 27.8.7-10, for example, a praetor expels the new *flamen Dialis* C. Valerius Flaccus from the senate when the latter tried to take up the seat formerly reserved for that priesthood. Livy reports that 'out of the all the youth nobody was considered more eminent or more worthy of approval by the most prominent of the fathers' (27.8.6: *nemo tota iuuentute haberetur prior nec probatior primoribus patrum*) than Flaccus. Thus, when the tribunes affirm his right to sit in the senate after he appeals to them, they are acting in accordance with senatorial *consensus*: and it is with the 'enormous approval of the fathers and the plebs', *magno adsensu patrum plebisque*, that they escort him into the senate (27.8.10). Livy's emphasis on the universal admiration for Flaccus, particularly among the foremost senators, makes it possible to read the tribune's decision as a response to public opinion, especially that of the senatorial order, although the historian does not explicitly describe it as such. But there is room for doubt, and behaving in a manner that is pleasing to the senate should not automatically be taken to mean that a tribune has been influenced by the senate. During the so-called 'Trials of the Scipiones', the tribune Ti. Sempronius Gracchus repeatedly earns the senate's praise for his actions, but it will be argued below that he is not portrayed as being motivated or influenced by the senate's feelings. Respect for the senatorial *consensus* has a more explicit influence on tribunes' actions in an

episode that has already been mentioned, however. When the senate's opinion turns against the consuls C. Popilius Laenas and P. Aelius Ligur, who are obstructing the senate's efforts to make M. Popilius restore the liberty and property of the Ligurian Statellae and refusing to depart for their province until the matter is dropped, two tribunes intervene, 'incited by this consensus of the fathers' (42.21.4: *hoc consensu patrum accensi*).<sup>295</sup> Out of respect for this *consensus* (and not under orders since the consul will not allow any *senatus consultum* to be proclaimed), M. Marcius Sermo and Q. Marcius Scilla effect the senate's will by decreeing that they will fine the consuls if they do not leave, and then bringing a *rogatio senatus consulto* to right the wrongs done to the Statellae (42.21.4-5, 8).

As noted above, however, this case is highly unusual. The tribunes' regard for senatorial opinion is more often expressed when they refer matters to the senate for judgement. In a small but important group of episodes, tribunes concede to the *patres* the right to decide contentious issues that have been brought to them or in which they have interceded. Some of these episodes concern a person's eligibility for a public position: the legality of a dictator being elected consul by the *comitia* over which he presides (27.6.9, 11), a plebeian's right to stand for a traditionally patrician priesthood (27.8.3), a young man's premature candidacy for the consulate (32.7.11-12). Other matters referred to the senate concern consular attempts to wrest *provinciae* from the men to whom they are currently entrusted (30.40.9-11 and 32.28.3-9), an appeal by maritime colonists against a levy (36.3.5), and the question of what to do with the books ascribed to Numa Pompilius discovered by L. Petillius (40.29.12-13). While the subjects of these referrals vary considerably, they are alike in being matters of great public importance. The tribunes' willingness to defer to the senate's judgement therefore reflects their acknowledgement of the superiority of the senate's judgement and its right to preside over questions of *mos maiorum* (where it concerns eligibility for high office and, in the case of Petillius' books, religion) and the running of the empire (the effective deployment of commanders and the recruitment of soldiers).

These episodes shed light on the nature of the tribunes' cooperation with the senate in Books 21-45. The tribunate's obedience to the senate is based on willing deference to the *patres'* traditional, collective *auctoritas*. Livy usually presents the tribunes' deference to the senate as a given, requiring no explanation (unlike the

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<sup>295</sup> For the background to this episode, see 42.8.1-9.6; 42.10.9-15; 42.21.1-3.

efforts of certain tribunes on the behalf of *nobiles*), but in the cases discussed above he indicates that it is entirely voluntary and born of their acknowledgement of the senate's powers of judgement and of the moral authority its judgements carry.<sup>296</sup> Insofar as the tribunes do fulfil the wishes of the ruling élite, for the most part they are depicted as doing so of their own accord, out of respect for the *auctoritas* of the senate, not out of a craven desire to serve the *nobiles*. This deferential attitude towards the senate is the reason that the tribunate plays a less disruptive part in politics in Livy's later books than in the earlier ones: it is both the basis of the *concordia* that prevails between the tribunate and the senate, and the outward manifestation of that *concordia*.

The *concordia* that prevails between tribunate and senate benefits both institutions, and through them the *res publica* in general. Livy's portrayal of their relationship makes it clear that their collaboration is essential to the good governance of Rome, and that despite their typically subordinate rôle in the relationship the tribunes' contributions are no less essential to maintaining a functioning and well-governed state. After all, despite its importance in the Roman political system, the senate's ability to effect its will outside the walls of the Curia was quite limited. In the *AUC*, however, the tribunes lend the senate their agency in the political spheres to which they have privileged access. The most common example of this phenomenon is of course the *rogationes* that tribunes bring before the *concilium plebis* on the senate's behalf, which effectively gives the senate the ability to legislate. The tribunes' willingness to act as the senate's proxies in the *concilium plebis* affords the senate a mechanism for turning its resolutions into laws, which in turn allows them to govern with the sanction of the *populus*. At the same time, it ensures that the laws the tribunes pass are in the best interests of the *res publica*, informed as they are by the collective wisdom of the senate. Regular collaboration between senate and tribunate is therefore indispensable to the governance of the *libera res publica*, since the cooperation and participation of both institutions is necessary for the passage of laws

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<sup>296</sup> The impression of willing obedience is reinforced by Livy's occasional inclusion of the phrase *si iis uideretur*, 'if it seemed right to them', in senatorial edicts requiring bills to be promulgated by the tribunes (25.5.8; 30.27.3; 30.41.4). The phrase gives these edicts the appearance of requests, and imply that the tribunes' compliance with them is voluntary, not compulsory. Badian 1990: 206 suggests that the phrase is a relic of a time before the tribunes was fully, formally integrated into the senate, when the *patres* could not simply instruct the tribunes to bring a *rogatio* on its behalf but had to negotiate with them to do so.

that benefit from both the wisdom and moral clarity of the senate and the legitimacy conferred by a popular vote.

Similarly, the tribunes sometimes allow the senate to exert a positive influence over matters in which they would otherwise have no say, as in the instances of contested candidacy mentioned above. The two consular elections, in particular, demonstrate how tribunes can extend the *auctoritas* of the senate into other political arenas, to the benefit of all involved. In the first of these episodes, C. and L. Arrenius interrupt the voting after the *centuria praerogatiua* chooses Q. Fulvius Flaccus, who happens to be the dictator presiding over the election. The tribunes object that it sets a dangerous precedent for a man to be allowed to preside over his own election (27.6.5). A long debate ensues, with the dictator citing legal precedent and countering the tribunes' argument with positive *exempla* (27.6.6-9), and at length he and the tribunes agree to abide by the senate's judgement (27.6.10). The *patres* effectively confirm the validity of Flaccus' argument, declaring that they do not favour any further delays in the elections because under the current circumstances the state ought to be led by tried and tested generals.<sup>297</sup> The tribunes duly withdraw their veto, and the old campaigner Flaccus is elected consul for the fourth time. On the other occasion, M. Fulvius and M. Curius obstruct the elections because T. Quinctius Flaminius is standing for the consulate after holding only a quaestorship (32.7.8-9). They argue that *nobiles* such as Flaminius are treating the aedilate and praetorship with contempt, and aspiring to the highest office without first providing *documenta* of their worth by holding the lower ones (32.7.10). After a debate in the Campus Martius, the matter is referred to the senate, which upholds the right of the *populus* to elect any legitimate candidate it wishes (32.7.11), and the tribunes acquiesce in the senators' authority (32.7.12: *in auctoritate patrum fuere tribuni*). Thus, in both episodes the tribunes' *intercessiones* and their subsequent referral of the problem to the *patres* (explicit at 27.6.10, implicit at 32.7.11) give the senate the power to decide a matter affecting *comitia*, an area usually outside of its purview. Although the senate overturns the tribunes' objections to the two men's candidacies, there is nothing in either account to suggest that these objections are unreasonable. The *intercessiones*

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<sup>297</sup> 27.6.10: *patribus id tempus rei publicae visum est ut per ueteres et expertos bellicae peritos imperatores res publica gereretur; itaque moram fieri comitiis non placere* ('To the fathers it seemed that, in the current state of affairs, public affairs should be conducted by old and tested *imperatores* experienced in war; and so the delay in the elections was not pleasing').

are not motivated by enmity or ambition, but by a legitimate concern for the preservation of tradition. But in the end the tribunes concede the right to decide to the *patres*, making them, quite rightly, the ultimate arbiters in matters of *mos*. One again, the collaborative relationship between senate and tribunate ensures that the state is well-served.<sup>298</sup> The tribunes' right to intercede in comitial proceedings acts as a safeguard against potential abuses, preserving *libertas populi*; the tribunes' readiness to submit the problem to the senate, meanwhile, ensures that it is judged by the men most competent to do so; and the senate's judgement is vindicated by the successes of Flaccus and Flamininus. And, once again, cooperation between senate and tribunes is mutually beneficial: the tribunes allow the senate to influence *comitia*, while the senate resolves problems that the tribunes by themselves could not.

In these cases, and in others that will be discussed in the next chapter, the senate's *auctoritas* and insight are required to resolve disputes involving tribunes. These episodes reaffirm the necessity of the senate's wisdom and authority for maintaining *concordia* at Rome. They also demonstrate the value of the senate's oversight to the functioning of the tribunate, particularly (as the following chapter will argue) when the tribunes' ability to veto one another's decisions creates an impasse. But there are also occasions in Books 21-45 in which the tribunes' independence from the curule magistrates allows them to resolve disputes between consuls and the senate in the latter's favour. The Ligurian controversy at 42.21, in which two tribunes use their prerogatives to bypass the senate when it was paralysed by the consuls' obstruction of its resolutions and then settle the affair in accordance with the senate's preferences, has already been discussed. It is not only the senate that benefits from the tribunes' resolution of this affair, however, but the Roman state in general. By compelling the consuls to leave for their province by their threat of a fine, tribunes free the senate to pass resolutions and thus return to the business of governing. Furthermore, by ordering M. Popilius to take steps to reverse the wrongs

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<sup>298</sup> Cf. Q. Fabius Maximus' intervention and subsequent election by an assembly over which he presides (24.7.11-9.3) and the contested candidacy of P. Scipio for the aedilate (25.2.6-7), in which their opponents give way before the personal *auctoritas* of Fabius and the popular enthusiasm for Scipio. These two cases have the potential to be more problematic than those in which the tribunes withdraw their objections out of respect for *senatus auctoritas*, because they depict individuals who are able to circumvent customary and institutional limits on personal political influence. It was argued earlier in this chapter that Livy deliberately downplays the problematic potential of Fabius' election. Scipio's candidacy, however, remains morally ambiguous, and, as the section on him in the final chapter will show, it forms part of a wider pattern of exceptional and problematic behaviour that Livy ascribes to him.

he has done to the Ligurians, the tribunes' bill restores the honour of the Roman people. The tribunes use their powers to bypass an obdurate consul to the benefit of the senate and the state in an earlier episode, too. When news comes of an impending invasion from Africa, the senate orders the consul M. Valerius Laevinus, who happens to be in Rome, not to wait to conduct the consular elections in person, but to appoint a dictator to do so and return to his army in Sicily immediately (27.5.10-14). Laevinus nominates M. Valerius Messalla, commander of the fleet in Sicily, but the senate refuses to accept his nomination because Messalla is outside of Roman territory (27.5.15). The consul refuses to concede, so the senate decrees that the choice should be given to the people; still Laevinus refuses to surrender his prerogative and forbids the praetor to do so either (27.5.16-17). The tribunes, however, unconstrained by consular authority, fulfil the senate's wishes and bring a *rogatio* before the *concilium plebis* (27.5.17). Again, this benefits the whole state as well as the senate, because it quickly resolves a problem that, had it dragged on, would have deprived Sicily of its consul and left Roman territory open to invasion. The tribunes come to the aid of the senate against a consul on another occasion, when P. Scipio, eager to obtain Africa as his province, is rumoured to be willing to put the matter to a popular vote if the senate should deny his wishes (28.45.1-3). Refusing to take part in a senatorial discussion that the consul seems intent on ignoring if it does not go his way, Q. Fulvius Flaccus appeals to the senate to defend him if he refuses to give his *sententia* when called upon (28.45.4-5). The tribunes not only promise to defend any senator who refuses to give his *sententia*, but decree that if Scipio asks the senate to assign provinces he must abide by its decision, and vow to obstruct any subsequent attempt by Scipio to bring the matter before the people (28.45.7). In so doing, the tribunes uphold the *libertas* of the senators and ensure that the senate's *auctoritas* is respected.

Thus, instances of tribunician disruption notwithstanding, the later extant books of the *AUC* convey an impression of general *concordia* between the tribunate and the senate. Livy creates this impression by depicting the tribunes working with the senate on a regular basis, both in everyday affairs and in moments of political conflict. The latter naturally stand out from the often monotonous narrative of domestic affairs, but they merely highlight qualities that are conveyed by Livy's portrayal of the regular, unremarkable interactions of the senate and the tribunes. The tribunes' obedience to the senate, manifested by their unquestioning enactment of its decrees, their willingness to seek its counsel, and their deference to its judgement, is



based on their respect for *senatus auctoritas*. The relationship between senate and tribunate is therefore not an equal one: as many scholars have recognised, Livy portrays the tribunes of the mature *res publica* as subordinate to the *patres*. But Livy does not depict the tribunes as *mancipia senatus*, still less as *mancipia nobilium*; he presents the tribunes' deference as voluntary, and their relationship with the senate as mutually beneficial. The *concordia* that prevails between the tribunes and the senate enhances the work done by both parties, letting them govern more effectively and, in several instances, allowing them to ameliorate political discord by working together.

### 2.2.3 *Concordia* by omission

The impression of *concordia* created by the many instances of cooperation between the tribunes and the senate is complemented by the vagueness of Livy's account of domestic politics. As noted above, there is reason to believe that Livy deliberately minimised the political conflicts of the late third and early second centuries in his effort to present that time as an age of *concordia maxuma*, and there is some evidence of this tendency in his depiction of the tribunes. There is an illuminating example of this at 38.36.7-9, where the tribune C. Valerius Tappo promulgates a law to grant full citizenship to the people of Formiae, Fundi, and Arpinum.

huic rogationi quattuor tribuni plebis, quia non ex auctoritate senatus ferretur, cum intercederent, edocti populi esse non senatus ius suffragium quibus uelit impertire, destiterunt incepto (38.36.8).

When four tribunes of the plebs interceded against this bill because it was not being carried with the senate's authorisation, having been instructed that it was the people's right, not the senate's to bestow *suffragium* on whomever it wished, they ceased what they had started.

This single short sentence is all the space Livy allocates to a controversy that, even from this curt summary, would seem to demand a detailed treatment. The elements involved – *discordia* among the tribunes, a plurality of them defending *auctoritas senatus* against the lone legislator, the latter's assertion of *ius populi* against the authority of the senate – all serve as the raw material for extended political episodes elsewhere in Livy, yet here they are all but passed over. Livy does not even avail himself of the opportunity for a speech that might at least have shown how Valerius succeeded in convincing his colleagues to withdraw their veto. Instead, he simply writes *rogatio perlata est*, and goes on to record the enrolment of the new citizens

(38.36.9). The brevity of the episode is surely deliberate, and it is easily explained by the embarrassing details of the Valerian plebiscite: here is a lone tribune who not only acts without *auctoritas senatus* but succeeds in passing his law without it, by appealing to the rights of the *populus*. In a more detailed treatment Tappo might have come across as *sediciosus*, and his successful assertion of popular jurisdiction over senatorial *auctoritas* could, on closer inspection, have awkward implications for Livy's general depiction of tribunate as the senate's willing but subordinate partner at this time. But the cursory treatment that the episode receives diminishes its impact on the narrative as a whole, preventing it from undermining the impression of *concordia* between the tribunate and the senate.

In fact, it appears that to lessen the significance of tribunician discord in his narrative Livy has even gone so far as to omit other difficult episodes entirely. Two such instances that ought to have been included in Livy's fourth decade are known from other sources: Plutarch (*Flam.* 18.2) alludes to a law passed by one Terentius Culleo (tr. pl. 189?) that compelled the censors to enrol all freeborn men 'in defiance of the aristocrats' (ἐπηρεάζων τοῖς ἀριστοκρατικοῖς); Cicero (*De or.* 2.261-2) mentions that the tribune M. Pinarius Rusca, presumably the praetor of 181, provoked opposition by proposing a *lex annalis*.<sup>299</sup> Assuming that these episodes were discussed by some of annalists available to Livy (and this seems almost certain of the case discussed by Cicero, at least), then his omission of them requires some explanation. Badian cites these as evidence of the historian's lack of interest in the mid-Republican tribunate, but, as it will be argued below, this explanation is less convincing in light of other comparable episodes that Livy does discuss.<sup>300</sup> It is more likely that they are omitted for the same reason that the episode of the *lex Valeria* is treated so briefly: to avoid giving the impression of a tribunate that regularly defied the Senate or disrupted the élite consensus at this point in Roman history.<sup>301</sup>

Other omissions in Livy's depiction of the tribunate are more subtle, but also contribute to the prevailing sense of *concordia* in politics. The lack of detail in Livy's accounts of the legislation, for example, actually reinforces the impression of easy cooperation between tribunes and senate. As noted above, the historian's descriptions

<sup>299</sup> The anecdote focuses on only the consular M. Servilius Pulex Geminus as an opponent of the bill, but the words attributed to Servilius imply that others opposed it too.

<sup>300</sup> Badian 1996: 187-8.

<sup>301</sup> See Mouritsen 2017: 109 on Livy's omission of these two episodes.

of tribunician legislation tends to be vague on matters of procedure: it is not always clear whether a bill was drawn up by the senate or by the tribune(s) who put it to the assembly, nor is it always clear whether a *rogatio* has received senatorial sanction. Sometimes Livy does not even mention the involvement of tribunes in the passage of laws in which some members of the college must have participated. In three cases, his references to *plebiscita* do at least imply tribunician involvement, but Livy obscures the tribunes' rôle while foregrounding that of the senate.<sup>302</sup> One of these episodes (35.40.5) is a description of the foundation of a colony *ex senatus consulto plebique scito*. Other colonies were likely established according to the same procedure (cf. 34.53.1), but Livy does not always refer to the tribunes' legislative rôle. Livy's rather casual treatment of legislative procedures has been a source of frustration to historians intent on understanding the practical aspects of Roman government, and it is attributed, as ever, to the Patavine's ignorance of and lack of interest in public affairs.<sup>303</sup> This is not an unjust assessment: more often than not, Livy is content merely to report the fact of colonial foundations, without bothering to refer to either the *senatus consulta* or *plebiscita* that authorised them.<sup>304</sup> Still, it is worth considering the effect of the historian's lack of precision on the impression he gives of the tribunate's relations with the senate. His truncated accounts of legislation elide the discrete rôles that the senate and the tribunate played in the process. By obscuring the boundaries between the two institutions, Livy gives the impression of complete harmony between them. Furthermore, the brevity of these episodes reinforces the impression that the tribunate is the subordinate partner in the relationship. As noted above, Livy's accounts of legislation tend to focus on the senate, dwelling on debates among the *patres* far more often than he does debates *in contione* among the tribunes. And while it is generally clear when the senate has initiated legislation that is promulgated *ex auctoritate patrum*, it tends to be less obvious when a tribune has drawn up a bill that received senatorial approval (except in highly unusual

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<sup>302</sup> 25.7.5: *comitia deinde a praetore urbano de senatus sententia plebique scitu sunt habita...* ('Then elections were held by the *praetor urbanus* in accordance with the judgement of the senate and by *plebiscitum*...'); 35.20.9: *sed his duobus primum senatus consulto, deinde plebei etiam scito permutatae prouvinciae sunt* ('But the provinces assigned to these two men were changed first by decree of the senate, then also by *plebiscitum*'); 35.40.5: *eodem hoc anno Vibonem colonia deducta est ex senatus consulto plebique scito* ('In this same year a colony was established at Vibo by decree of the senate and by *plebiscitum*').

<sup>303</sup> Badian 1996: 188-9, referring to Livy's treatment of virginal land distributions and colonial foundations.

<sup>304</sup> Badian 1996: 188.

circumstances, as the analysis above has shown). Thus, the lack of detail and clarity contribute to the sense of the senate's supremacy over public affairs, while downplaying the autonomy of the tribunate and thus the significance of its involvement in legislation – to the extent that the rôle of the tribunes can even be passed over entirely. Livy's cursory treatment of the complicated interactions of the tribunate and senate therefore enhances the impression of inter-institutional *concordia*, with the senate supreme and the tribunate a willing and obedient collaborator.

The impression of concord between the tribunate and the senate is matched by a subtle suggestion of concord among the tribunes that is also achieved, in part, by the *AUC*'s lack of precision. As a rule, Livy avoids naming individual tribunes except when circumstances necessitate it. More commonly, he simply ascribes the activities of tribunes to *tribuni plebis*, 'the tribunes of the plebs' in general, neither referring to specific individuals nor reporting the number of tribunes involved in a given activity.<sup>305</sup> This is not, as Badian suggests, because Livy is uninterested in the tribunes; nor is it merely intended to avoid disrupting the flow of his prose with a list of names, for in other contexts Livy is quite happy to provide lengthy lists (of candidates for high office, for example).<sup>306</sup> A better understanding of the effect it has in the depiction of the tribunate can be gained from a comparison with the situations in which Livy does name individual tribunes. In most cases, tribunes are singled out for causing or exacerbating political controversies. Indeed, most of the contentious episodes that will be discussed in the following chapter revolve around a lone tribune.<sup>307</sup> In contrast, most of the uncontroversial, everyday activities of the tribunate are attributed to an undifferentiated plurality of tribunes, as are some overtly positive acts. Not every lone tribune named in the *AUC* is a troublemaker, of course: many are mentioned more-or-less in passing, in entirely neutral contexts. Many others are named as one of a pair responsible for a range of activities, and a few of these pairs,

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<sup>305</sup> 25.12.6-7; 25.5.8; 26.2.5-6; 26.21.5; 27.5.7; 27.5.7, 14-19; 27.8.3, 4-10; 28.45.4-7; 29.19.6; 29.22.7; 30.27.3-4; 30.41.4; 31.50.6-11; 33.42.2-4; 34.56.9-11; 36.3.4-5; 37.51.4; 40.29.12-13; 42.22.2-3; 43.4.6; 43.6.6; 45.35.4; 45.36.2, 3; 45.36.9-10.

<sup>306</sup> Badian 1996: 189.

<sup>307</sup> 21.63.2, 3-4; 22.25.3-11; 22.34.3-11; 24.43.2-3; 27.20.11-21.4; 29.37.17; 31.6.3-6; 32.7.4; 36.39.4-40.14; 39.4.3-4; 43.16; 44.16.8; 45.15.9.

too, cause political discord;<sup>308</sup> many more tribunician pairs, however, contribute positively to the *res publica*, most often as the sponsors of senatorially sanctioned bills or as the opponents of their turbulent colleagues.<sup>309</sup> But it is still striking that most of the tribunes who disturb the harmony of politics are depicted as acting on their own. Singling out the disruptive tribunes in this way accentuates their individualism and illustrates how their self-interest damages the *res publica*. Attributing actions to pairs of tribunes or to the college as a whole has the opposite effect: it suggests collegiality, conveys a sense of the cooperation and unity of purpose that allows the tribunes in question to act together in the service of the *res publica*. By attributing agency to several tribunes or the tribunes in general, Livy minimises the part played by specific individuals in regular tribunician activities and so creates an impression of *concordia* within the college.

#### 2.2.4 Ti. Sempronius Gracchus: Livy's exemplary tribune

There is, however, one particularly noteworthy case in these books of a tribune who is singled out for his positive rôle. Ti. Sempronius Gracchus features prominently in two episodes as a tribune, first in the 'Trials of the Scipiones' and then in the matter of M. Fulvius Nobilior's triumph. Livy devotes significant space to Gracchus' defence of P. and L. Scipio, even including a digression about an *oratio* ascribed to the tribune that contradicts his main narrative. This attention is no doubt explained in part by Livy's desire to chronicle Gracchus' illustrious career. This historian has already introduced Gracchus as a youth of exceptional vigour, and will go on to treat his subsequent career in some detail; an extended account of his tribunate, his first noteworthy public office, is therefore not out of place.<sup>310</sup> But Gracchus' tribunate is

<sup>308</sup> 37.57.9-58.1 (P. Sempronius Gracchus and C. Sempronius Rutilius' charges against Glabrio); 38.50-3, 38.54, and 38.60.10 (the Q. Petillii's persecution of the Scipiones); M. Fundanius and L. Valerius' proposal to abrogate the *lex Oppia* (34.1.2) is not presented in the same overtly negative light, but it still causes discord.

<sup>309</sup> 25.3.8-5.1; 27.6.2-11; 29.20.4, 7, 9, 11; 30.40.7-16; 30.43.1-4; 32.8-12; 32.28.3-9; 33.22; 33.25.4-8; 34.1.4; 35.8.9; 38.54.5, 11; 41.6.2-3; 42.21.3-5; 42.43.7; 43.8.1-3, 9-10.

<sup>310</sup> The Ti. Sempronius Gracchus whom Livy describes as being made an augur *admodum adulescens* at 29.38.7 may be the consul of 177 and 163 (who certainly became an augur at some point: see Cic. *Div.* 1.36), but the identification is not certain: it may instead refer to the otherwise unknown Ti. Sempronius Gracchus, mentioned at 41.21.8, who was an augur at the time of his death in 174. The identification of the augur of 29.38.7 with the father of the Gracchi is posited by Bardt 1871: 18-20; accepted tentatively by Broughton *MRR* 1.406-7 n. 4 and unequivocally by Rüpke 2005: 1270-1; rejected by Badian 1968: 32-6; Scullard 1973: 285; Evans and Kleijwegt 1992: 192. The consul of 177 is certainly the *legatus* despatched by L. Scipio to Philip V whom Livy describes as *longe tum acerrimus iuuenum*, and who lives up to this description with the speed with which he completes his

also significant in its own right, because, as Gracchus himself indicates during the debate over Nobilior's triumph, it functions as an *exemplum* of good tribunician conduct. Here, Livy has Gracchus warn his fellow-tribune M. Aburius that what they do in their tribunate 'will be committed to tradition and posterity' (39.5.5: *fore ut memoriae ac posteritati mandetur*), Gracchus' deeds for positive reasons, Aburius' for negative ones. The *AUC*'s depiction of Gracchus in both this episode and the earlier one fulfils his prediction, memorialising him for the principled and conscientious way he conducted his tribunate. This is all the more significant because of the *discordia* that characterised the tribunates of Gracchus' sons Tiberius and Gaius, which Livy would go on to describe in Books 58 and 60-1 respectively. The *Periochae* of those books are not sufficiently detailed to attempt a proper reconstruction of Livy's characterisation of the Gracchi,<sup>311</sup> but the disorders that they provoked by their reckless abuse of the tribunate's powers is readily apparent. The notoriety of the younger Gracchi's tribunates probably influenced Livy's choice of their father to exemplify the qualities of a good tribune: the historical irony would have been obvious to his audience, and the contrast between father and sons only accentuates the positive qualities of the former's tribunate. In the following analysis of Livy's depiction of the elder Gracchus in Books 38-9, it should therefore be born in mind that he serves as a specific antithesis to his sons, as well as as a general exemplar of proper tribunician behaviour.

Livy's account of the 'Trials of the Scipiones' is famously complicated, and the involvement of Ti. Gracchus in them no less so. Yet despite the uncertainty over what exactly Gracchus did and said (especially with regard to the trial of L. Scipio Asiaticus for embezzlement), Livy is clear about his rôle in the affair, consistently

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mission: 37.7.11-14. Livy follows Gracchus' career closely, recounting his diplomatic mission to Philip V and Eumenes: 39.24.13; 39.33.1; his appointment as triumvir for establishing the colony at Saturnia: 39.55.9; his praetorship/propraetorship: 40.35.10-14; 40.40.14-15; 40.47.1-50.5; his first triumph: 41.7.1-3; his consulate/proconsulate: 41.8.1, 3-5; 41.9.1, 8; 41.12.5-6; 41.15.6-8; 41.17.1-4; his second triumph: 41.28.8-9; and his censorship: 43.14.1, 5-10; 41.15.7-8; 43.16; 44.16.8; 45.15.1-9. At 40.44.12 Livy refers to a Ti. Sempronius, an aedile of 182, whose lavish games proved such a financial burden on the people of the empire that the senate issued a decree regulating expenditure on games. This aedile is generally identified as the father of the Gracchi (e.g. Münzer *RE* 2A.1405; *MRR* 1.382; Briscoe 2008: 525-6; Walsh 1996: 166-7), but Livy makes no mention of his aedile in his account of 182. It is possible that Livy omitted it intentionally out of a desire to show Gracchus only in a good light, as Walsh 1996: 167 suggests, or it may simply be that Livy's (possibly hostile) source only mentioned it in this context, as Briscoe 2008: 525 argues; either way, Livy's brevity spares Gracchus' reputation.

<sup>311</sup> Furthermore, the *Periochae* are not necessarily a guide to Livy's treatment of a subject or character, because the epitomator had his own interests and agenda: see Chaplin 2010, esp. 460-3; Levene 2015.

depicting him as the defender of the Scipiones. Livy also emphasises that the tribune's stalwart defence of the brothers is not a product of any partisan concerns; indeed, Livy draws attention to the enmity that existed between Gracchus and P. Scipio Africanus at the first mention of the former during the 'Trials' sequence (38.52.9: *tribunus plebis eo tempore Ti. Sempronius Gracchus erat, cui inimicitiae cum P. Scipione intercedebant.*) Rather, Gracchus champions the cause of the Scipiones because he is conscious of the proper functions of the tribunate and cares for the majesty of the Roman people.

Gracchus' subordination of his private concerns to the public good is stressed from the outset. He is introduced after L. Scipio appeals to the tribunes, claiming that his brother Africanus, who has retired to his house at Liternum, is too ill to obey the summons to another hearing in Rome (38.52.1-8). When Gracchus forbids his name to be added to his colleagues' decree of an adjournment, everyone expects him to give a harsher pronouncement because, Livy implies, of his known *inimicitia* towards P. Scipio (38.52.9). But Gracchus instead declares that he will veto any subsequent attempt to try Scipio *in absentia*, and that, in the event of his return, he will intercede, if appealed to, to save the great man from having to plead his case at all (38.52.10). Gracchus justifies his unexpected decree by recalling Africanus' deeds and the honours bestowed upon him by the Roman *populus*, arguing that for such a man 'to stand as a defendant beneath the Rostra and to subject his ears to the bawling of young men [i.e. the two Q. Petillii, the tribunes hounding Scipio] would be a greater dishonour to the Roman people than to himself' (38.52.11: *ut sub rostris reum stare et praebere aures adolescentium conuiciis populo Romano magis deforme quam ipsi sit*).<sup>312</sup> Livy has Gracchus reiterate this argument in a short *indignatio* addressed to his fellow tribunes at 38.53.1-4. The purpose of *indignatio* is to arouse strong emotion – in this case, shame at the harassment of someone who ought to command respect because of his achievements and the honours bestowed on him – and it has the intended effect not just on the other tribunes, but on Scipio's accusers, whom it induces to reconsider their prosecution (38.53.5).<sup>313</sup>

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<sup>312</sup> The spelling of the *nomen* of Scipio's accusers used here follows Briscoe's practice in his Teubner edition (1991) and his commentary (2008: 180), which in turn follows Sigonius as well as the *Fasti* and other epigraphic evidence. One of these two tribunes is probably Q. Petillius Spurius, cos. 176 (*MRR* 1.369), the other presumably his cousin: Münzer *RE* 19.1138; Briscoe 2008: 179-80.

<sup>313</sup> On the functions of *indignatio* or *amplificatio*, see Cic. *Inv. rhet.* 2.48, cf. 1.98, 100-5; Briscoe 2008: 187; Craig 2010: 77-9.

Gracchus' rôle in Livy's account of Scipio Africanus' 'trial' is to vindicate the latter's conduct in the preceding chapters (38.50.10-12 and 38.51.6-52.2). The tribune's decree and speech serve to reiterate and elucidate the themes introduced by Livy's account of the Petillii's first *contio*, where Scipio's achievements and the shameful ingratitude of the Romans to a man on whom they have bestowed the highest honours are also emphasised.<sup>314</sup> Livy also characterises the accusations of the Petillii as nothing more than calumny against a man of unblemished reputation (38.51.4), and Gracchus' dismissal of his colleagues' lawsuit as *adulescentium conuicia* (38.52.11) reinforces the opprobrium attached to it. That it is Scipio's *inimicus* who recognises the shamefulness of his treatment vindicates his response to it, confirming that his effective refusal to submit to the tribunes' authority is not unjustified.

But Gracchus has a significance beyond his function in the episode as a whole, for his conduct, both as a tribune and as a member of the political élite more generally, is exemplary. Gracchus displays the qualities of a good leader, demonstrating sound judgement and the ability to influence public affairs for the better. Livy also presents Gracchus as an able orator, but his decree and supplementary *oratio* demonstrate more than his effective use of rhetoric. They show that Gracchus has an accurate understanding of the attack on Scipio and its significance, which is to say that his assessment of the situation matches Livy's presentation of it in the preceding chapters. That Gracchus recognises the shamefulness of the attempt to degrade a man of Scipio's stature on false pretences (as the *AUC*'s readers are expected to, from what amounts to an *indignatio* directed at them at 38.51.7-14) demonstrates both political insight and sound moral instincts on his part.<sup>315</sup> His judgement is all the more authoritative because it is unbiased by feelings of friendship towards Scipio, and it is recognised as such by the senate at the meeting that follows his decree.

ibi gratiae ingentes ab uniuerso ordine, praecipue a consularibus senioribusque, Ti. Graccho actae sunt, quod rem publicam priuatis simultatibus potiore habuisset (38.53.6)[.]

There exuberant thanks was given to Ti. Gracchus by the whole order, especially by the consulars and older men, because he had held the *res publica* more important than private quarrels.

<sup>314</sup> See esp. 38.50.6-7, 11-12; 38.51.7-14.

<sup>315</sup> This also reflects, and effectively confirms, the first of the two conflicting interpretations of the affair mentioned by Livy at 38.50.6-7.



The senators also denounce the Petillii, verbalising what has hitherto only been implicit, that these tribunes are motivated not by a desire for justice but by self-interest: ‘they wanted to be illustrious through another person’s unpopularity and were after the spoils of a triumph over Africanus’ (38.53.7: *splendere aliena invidia uoluissent et spolia ex Africani triumpho peterent*).<sup>316</sup> This too confirms that Gracchus’ opposition to the Petillii is morally sound. The approval of the senate affirms that Gracchus has interpreted the situation correctly and that he has responded to it appropriately.

Gracchus’ personal virtues are complemented by his dedication to his duties as a tribune. His decree calls attention to the powers of his magistracy, and in doing so conveys his mindfulness of the responsibilities of his office. Gracchus begins by promising to stop his fellow tribunes trying Africanus when he is not present to defend himself, implicitly by using his power of *intercessio* (38.52.10). Gracchus then offers his *auxilium* to Scipio should the latter exercise his right of *prouocatio*, to prevent him from being subjected to public harassment (*si se appellet, auxilio ei futurum, ne causam dicat*). The decree harks back to the original and primary purpose of the tribunate: to defend citizens from abuse at the hands of magistrates. Of course, the magistrates against whom the tribunate was originally conceived as a defence were the consuls, whereas Gracchus invokes its powers against other tribunes. And in fact the Petillii, like Gracchus, have framed their arguments around the customary rôle of the tribunate. After Scipio fails to obey their summons, the Petillii, in what amounts to a charge of tyranny, accuse him of *superbia* and of robbing the *populus* of their rights and freedoms. Their argument (38.52.4-5) hinges on the traditional symbolism of the tribunate as the guarantor of the people’s *libertas*. They suggest that by refusing to obey their summons, and by causing their previous *contio* to break up, Scipio has in effect abrogated tribunician authority and hence ‘deprived’ the Romans ‘of their right to speak their minds about him, and of their *libertas*’ (38.52.5: *ius sententiae de se dicendae et libertatem ademisset*). So in 38.52-3 Livy pits not only the tribunes but their respective interpretations of the tribunate’s functions against one another: Gracchus and his focus on the tribunate’s duty to protect citizens from magisterial

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<sup>316</sup> Livy applies the phrase *splendere aliena invidia*, with equal opprobrium, to C. Terentius Varro’s invectives against Q. Fabius Maximus Verrucosus at 22.34.2: Briscoe 2008: 189. On the rôle of these invectives in Varro’s ascent to the consulate of 216, see Chapter 4.2.2.

power, against the Petillii and their emphasis on the more abstract rôle of the tribunate as guarantor of popular freedom. This does not represent a conflict of ideologies, however, since Gracchus' and the Petillii's conceptions of tribunate and its purposes are not antithetical.<sup>317</sup> The conflict is instead between the ways that the tribunes are actually performing their rôles. Livy has made it clear that the Petillii's prosecution of Africanus is unwarranted with his curt summation of their original accusations: 'They heaped *invidia* however they could on someone who was untouched by ill repute' (38.51.4: *infamia intactum invidia, qua possunt, urgent*). The Petillii are therefore abusing their powers by prosecuting an innocent man, and, as such, by defending Scipio Gracchus is fulfilling his obligation as a tribune to protect citizens from mistreatment at the hands of the magistrates. Despite their rhetoric, it is not the Petillii but Gracchus who is the true defender of *libertas* here. And although his energies are focused on a single individual, Gracchus also displays a concern for his duty to the Roman populace in general. His justification for defending Scipio focuses on the great man and his contributions, but he also frames his argument as a defence of the honour and reputation of the *populus Romanus*:

ad id fastigium rebus gestis honoribus populi Romani P. Scipionem deorum hominumque consensu peruenisse, ut sub rostris reum stare et praeberere aures adulescentium conuiciis populo Romano magis deforme quam ipsi sit (38.52.11).

such a pinnacle had P. Scipio reached by his deeds and by the honours of the Roman people, with the approval of gods and men, that for him to stand as a defendant beneath the Rostra and to subject his ears to the bawling of young men would be a greater dishonour to the Roman people than to himself.

The sentiment is reiterated in his supplementary speech. After recounting Scipio's achievements, Gracchus reminds his audience that it is they who have conferred honours on Scipio (38.53.4: *uestris honoribus*) in an effort to shame them into recognising how badly Scipio's prosecution reflects on them. This concern for the honour of the *populus* is entirely appropriate for a tribune of the plebs.<sup>318</sup> So again it

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<sup>317</sup> On the contrary, they are interdependent, since the notion of the tribunate as a bulwark of *libertas* rested primarily on the tribunes' *ius auxilii*: see Arena 2012: 50-3.

<sup>318</sup> Gracchus also exemplifies one side of the debate, mentioned by Livy at 38.50.6, that the 'trial' of Africanus provoked: *alii non tribunos plebis sed uniuersam ciuitatem, quae id pati posset, incusabant* ('Some people found fault with not only the tribunes of the plebs [i.e. the Petillii] but the entire state for being about to allow this').

is Gracchus, and not the Petillii, who emerges as the better servant of the Roman people in this episode.

Livy therefore presents Ti. Sempronius Gracchus as an alternative model of tribunician conduct to the negative one afforded by the Petillii. Although Scipio's accusers present themselves as defenders of popular *libertas*, Livy's characterisation of their accusations (38.51.4; cf. 38.51.1), together with the hostile reactions of Gracchus (38.52.11; cf. 38.53.3) and the senate (38.53.7) to them, show that they are in fact no more than demagogues whose rhetoric serves a malicious personal agenda. Gracchus, on the other hand, fulfils his tribunician obligation to protect citizens from predatory magistrates in spite of his personal enmity towards the citizen in question. In so doing, he also serves the public interest by preventing the *populus Romanus* from dishonouring itself by allowing one of its heroes to be persecuted unjustly. By serving the *populus* and preserving *libertas* (that of Scipio) more effectively than the Petillii, Gracchus redeems the tribunate from them and exemplifies how the magistracy can fulfil its traditional remit when it is not abused for selfish purposes, and without resorting to demagoguery. As an *exemplum* of how a tribune ought to carry out his duties, Gracchus' performance in 38.52.9-53.4 is comprehensive, and its exemplary power is signalled by the very specific terms in which Livy describes its effect on the Petillii. Moved by their colleague's decree and *oratio*, 'they said they were going to discuss between themselves what their right and duty was' (38.53.5: *deliberaturos se quid iuris sui et officii esset dixerunt*). Gracchus' words do not simply convince the Petillii to abandon their prosecution of Scipio; they actually force the Petillii to reappraise the right(s) and obligation(s), *ius et officium*, of the magistracy that they share with Gracchus. If Gracchus' *exemplum* can persuade the unscrupulous Petillii to consider the proper rôle of the tribunate, it ought to be all the more persuasive to the conscientious reader.

Livy does not describe in detail how the matter was resolved. Only a curt notice that 'Thereafter there was silence regarding Africanus' (*silentium deinde de Africano fuit*) precedes Livy's obituary for Scipio (38.53.8-11), but the impact of Gracchus' intervention is clear enough. This is therefore a rare instance of a tribune who brings about a just resolution to a political conflict and restores *concordia* (albeit temporarily) by breaking with his colleagues rather than working with them. As illustrated above, it is far more common in Books 21-45 for individual tribunes, especially those who act without their colleagues' support, to be a source of discord.

Gracchus, however, is depicted as acting alone throughout the episode. There is no hint in the *AUC* that Gracchus is serving factional interests, despite attempts by some historians and commentators to read his intervention in this way.<sup>319</sup> Nor is Gracchus depicted as the *mancipium* of the senate. Although he earns the praise of the *patres*, nothing in his decree or his supplementary speech suggests that he had been seeking their approval, much less working for them. Livy depicts him as acting of his own accord, directed only by his moral instincts. Gracchus' independence gives the *exemplum* much more authority than it would have had the historian presented him as mere tool of the senate, but it is the latter quality, the tribune's moral sensibilities, that make him a positive actor in the episode. This suggests that dissent and individualism among the tribunes, while frequently the cause of *discordia*, are not inherently bad: the effects of individualism and dissent simply depend on the character and motivation of the dissenting tribune. Hence, in contrast to the self-interested Petillii, whose abuse of their tribunician power causes *discordia*, Gracchus is able to resolve political conflict by acting alone precisely because he is not self-interested, because he understands the proper functions of the tribunate and dedicates himself to them.

Thus, in the trial of Scipio Africanus Ti. Sempronius Gracchus serves as a counterweight to the Petillii, exemplifying the positive potential of the tribunate where they exemplify the negative. In the contentions over L. Scipio Asiaticus that follow Africanus' death Gracchus is cast in a practically identical rôle. Indeed, in Livy's primary narrative the details of Gracchus' intervention on behalf of Asiaticus so closely resemble those of his intervention on behalf of Africanus that it is almost certain that some historiographical duplication has occurred.<sup>320</sup> What matters for the present study, however, is not how this duplication occurred but what impact it has on the characterisation of Gracchus. At 38.60.3-6 Gracchus again dissents from his colleagues, and again he decrees that he will not allow a man who has contributed so much to the empire to suffer the indignities to which his enemies would subject him. The man in this case is L. Scipio, and he has been convicted of accepting a bribe from

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<sup>319</sup> Scullard 1973: 298, cf. 295-6, in an historical interpretation of the 'Trials' that restricts Gracchus' rôle to his intercession on behalf of L. Scipio, has the tribune intervene at Africanus' request. Briscoe 1982: 1102, on the other hand, imagines Gracchus to have been a supporter of M. Cato, the instigator of the attack on the Scipiones, and proposes that Gracchus intervened at the last moment at *Cato's* request, to save the Scipiones from complete humiliation.

<sup>320</sup> 'Primary narrative' refers to Livy's main account of the course of events of the 'Trial of the Scipiones' at 38.50.4-55.13 and 38.57-60, which he presents without comment, as distinct from his discussion of divergent traditions and accounts of the trial and death of Africanus at 38.56-7, which includes a secondary narrative: an alternative, hypothetical reconstruction of events.

Antiochus III during his consulate (38.55.5-6). Maintaining his innocence, Scipio claims that he cannot pay the sum he is charged with having accepted (38.58.2), so the praetor orders his arrest (38.58.2; 38.60.2). P. Scipio Nasica appeals to the tribunes (38.58.3), and after they have discussed the matter C. Fannius announces that he and his colleagues, ‘excepting Gracchus’ (*praeter Gracchum*), will not intercede to prevent the praetor from exercising his powers (38.60.3). Gracchus then decrees that while he will not prevent the praetor from exacting the fine (38.60.4), he will not permit Scipio to be imprisoned.

Ti. Gracchus ita decreuit...L. Scipionem, qui regem opulentissimum orbis terrarum deuicerit, imperium populi Romani propagauerit in ultimos terrarum fines, regem Eumenem, Rhodios, alias tot Asiae urbes deuinxerit populi Romani beneficiis, plurimos duces hostium in triumpho ductos carcere incluserit, non passurum inter hostes populi Romani in carcere et uinculis esse mittique eum se iubere (38.60.5-6).

Ti. Gracchus thus decreed...that he would not allow L. Scipio – who had conquered the wealthiest king in the world, extended the *imperium* of the Roman people to the furthest ends of the earth, bound King Eumenes, the Rhodians, and so many other cities of Asia with obligations to the Roman people, and imprisoned in the jail the very many leaders of their enemies who had been led in triumph – to be in the jail and in chains among enemies of the Roman people, and commanded that he be released.

Gracchus’ justification for defending Asiaticus here is essentially the same as the one he gave for defending Africanus. He emphasises Lucius’ contributions to Roman *imperium*, as he did in his decree and speech for Publius (38.52.11-53.4), and in so doing illuminates the shame that ought to be felt at the great man’s mistreatment. The shameful situation is not made explicit here, as it is on the earlier occasion (38.52.11), but it is forcefully evoked by the contrast between Scipio’s glorious achievements and the pathetic image of him shackled in the *carcer* amidst Rome’s enemies, some of whom he himself might have imprisoned after his triumph. The target of Gracchus’ *indignatio* is also the same as before, though again it is less explicit. On the previous occasion Livy has Gracchus point out that letting the Petillii degrade Africanus by trying him would dishonour the *populus Romanus* (38.52.11). On this occasion it is only implied, but strongly, by the three successive references to the *populus Romanus*. Gracchus twice presents Asiaticus’ achievements as services to the *populus Romanus* specifically, which not only heightens the pathos of his description of Asiaticus imprisoned *inter hostes populi Romani*, but suggests that

allowing it to happen would be shamefully ungrateful of the Roman people. So once again Livy depicts Gracchus as the protector not only of an individual citizen, but of the honour of the *populus Romanus*, as befits a tribune of the plebs.

Ti. Gracchus is also the focus of Livy's excursus (38.56-7) on the discrepant material concerning the trial and death of Scipio Africanus. Livy passes swiftly over the questions of the identity of Scipio's accuser (38.56.2, 6) and of the time and location of his death and burial (38.56.2-4) to a written *oratio* attributed to Gracchus, which is so inconsistent with his main account that 'another story entirely must be composed in accordance with Gracchus' speech' (38.56.8: *alia tota serenda fabula est Gracchi orationi conueniens*). The historian does just that, composing an alternative version of Gracchus' rôle in the 'Trials' based on the *oratio* and on the tradition that Africanus was still alive when his brother was convicted and led away in chains (38.56.9-57.8; 38.57, relating the betrothal of Scipio's daughter to Gracchus, proceeds from this alternative version, describing events as though Scipio were still alive at that point). According to this tradition (38.56.8-9) Africanus tried to free his brother, and resorted to violence when the tribunes intervened. The *oratio* ascribed to Gracchus, or at least the part of it that Livy summarises at 38.56.10-13, reproached Scipio for this unlawful action. And although Livy's summary is brief it manages, in the space of the first sentence, to present Gracchus as the upholder of the tribunate and its prerogatives yet again. In this version of events, however, it is against Africanus himself, rather than his persecutors, that Gracchus upholds the tribunate. The tribune protested that Scipio's violent interference with his brother's arrest amounted to the abolition of *tribunica potestas* by a private citizen. Gracchus offered to defend L. Scipio because 'it was a more endurable precedent for both the tribunician power and the *res publica* to be seen to be conquered by a tribune of the plebs than by a private citizen' (38.56.10: *tolerabilioris exempli esse a tribuno plebis potius quam a priuato uictam uideri et tribuniciam potestatem et rem publicam esse*). Walsh interprets this as an allusion to the younger Ti. Gracchus' removal of his obstinate colleague M. Octavius from office, which could indeed be viewed as the overthrow of both the tribunate's traditional prerogatives and the *res publica* that they supported.<sup>321</sup> But in the context of Livy's summary it is clear that the sense of revolutionary violence conveyed by *uictam...tribuniciam potestatem et rem publicam*

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<sup>321</sup> Walsh 1993: 191.

pertains not to the tribune but to Scipio Africanus and his recent actions, a point reinforced by the greater proximity of *priuato* than *tribuno* to the phrase they modify.<sup>322</sup> Gracchus' statement reflects a desire to preserve the tribunate, not to overthrow it. His promise to defend L. Scipio is born of his desire to uphold *tribunicia potestas* by protecting it from further infringement by a *priuatus*; any subsequent obstruction of the arrest would be lawful, initiated by a tribune exercising his rights to intercede against his colleagues. So although the circumstances of Gracchus' intervention in this alternative version of events are radically different from those described by the main narrative, Gracchus still emerges as a tribune of exemplary conscientiousness.

This characterisation of Gracchus is consistent throughout Livy's account of the 'Trials of the Scipiones', and it is carried over into Gracchus' final appearance as a tribune, at 39.5.1-5, during the debate in the senate over the triumph of M. Fulvius Nobilior.<sup>323</sup> Although this episode takes place in the subsequent book, Gracchus' appearance in it occurs a mere four chapters after his previous one in the trial of Scipio Asiaticus, at 38.60.3-7. The later episode prominently features a reference to Gracchus' earlier actions, which, besides its immediate function in the narrative, serves to reinforce the exemplary value of the tribune's rôle in the previous book. Gracchus' appearance in the controversy over Nobilior's triumph therefore serves as a coda to his involvement in the 'Trials of the Scipiones', which it follows shortly in the narrative, and to which it is intratextually linked.

The controversy is part of an ongoing feud between Nobilior and M. Aemilius Lepidus.<sup>324</sup> Although the senate, satisfied with Nobilior's conduct as proconsul in Aetolia, moves to grant him a triumph, the tribune M. Aburius intervenes, declaring that he will veto any decree on the matter issued in the absence of Lepidus, currently a consul and on campaign in Liguria (39.4.1-3). Aburius explains that Lepidus wished to speak against permitting Fulvius a triumph, and to that end the consul had instructed the tribune to prevent any decision being made before his return from his province (39.4.4). Fulvius appeals to the senators' sense of justice, begging them not to let Lepidus rob him of his triumph on account of their personal feud, and everyone

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<sup>322</sup> Cf. Briscoe 2008: 199.

<sup>323</sup> On this episode see Pittenger 2008: 204-7.

<sup>324</sup> For the disputes that lead up to this particular confrontation, see 38.43.1-2; 37.47.7; 38.35.1; 38.43-4, with Pittenger 2008: 196-204.

present tries to convince Aburius to drop his opposition to the decree (39.4.5-5.1). It is his colleague Ti. Gracchus' *oratio* at 39.5.1-5, however, that is chiefly responsible for moving Aburius (39.5.1, 6). Instead of merely entreating or chastising Aburius as the other senators do, Gracchus calls his colleague's attention to the way he is abusing his office, and offers the *exemplum* of his own conduct as a corrective. Indeed, Gracchus' argument revolves around exemplarity, his misguided colleague's as much as his own. He begins by pointing out that it does not set a good *exemplum* for a magistrate to pursue his private quarrels while in office (39.5.2: *ne suas quidem similtates pro magistratu exercere boni exempli esse*). Although this criticism refers to Lepidus, Gracchus emphasises that, as a tribune of the plebs, Aburius risks becoming an even worse *exemplum* than the consul, by pursuing someone else's quarrels (*alienarum uero similtatum tribunum plebis cognitorem fieri turpe*). Gracchus argues that it is particularly disgraceful for a tribune to do so at the behest of a consul, because the tribunate has been 'bestowed on him for the sake of the assistance and liberty of private citizens' (*mandatum pro auxilio ac libertate priuatorum*), not for abetting consular tyranny (39.5.2-4).<sup>325</sup> Gracchus drives his point home by contrasting the example set by his own selfless use of his tribunate to defend his *inimici*, the Scipiones, with the negative example that Aburius will set, should he persist in obstructing Nobilior's triumph: he tells Aburius that 'it will be committed to tradition and posterity that in the same college one of the two tribunes of the plebs set aside his own enmities in the public interest, while the other pursued someone else's, entrusted to him' (39.5.5: *fore ut memoriae ac posteritati mandetur eiusdem collegii alterum ex duobus tribunis plebis suas inimicitias remisisse rei publicae, alterum alienas et mandatas exercuisse*).

The immediate purpose of Gracchus' self-referential *exemplum* is of course to convince Aburius to withdraw his objection to Nobilior's triumph; and this it achieves, forcing Aburius to withdraw, 'overcome by these reprimands' (39.5.6: *his uictus castigationibus*). At the same time, however, it alerts the external audience – Livy's readers – to the more far-reaching and more profound didactic significance of Gracchus' tribunate. Gracchus himself anticipates that his *exemplum* (and that of Aburius) will outlast the present circumstances and be committed to *memoria* and *posteritas*. The truth of his prediction is of course confirmed by the AUC's account of

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<sup>325</sup> Cf. Pittenger 2008: 206.



the tribune's part in the 'Trials of the Scipiones' in Book 38. The current episode, however, plays an important rôle in the memorialisation of Gracchus' tribunate, because by showing how, when invoked as an *exemplum*, the memory of Gracchus' tribunate convinced Aburius to desist from abusing his own, it illustrates the moral weight that the *exemplum* ought to carry. So Gracchus' argument both anticipates that the *memoria* of his tribunate will endure, and demonstrates, for the reader no less than for Aburius, its positive exemplary potential.

In addition to expanding the temporal parameters of Gracchus' *exemplum*, the allusion to the part he played in the 'Trials of the Scipiones' also expands the range of qualities that his tribunate exemplifies beyond the immediate requirements of his argument. Gracchus' aim is to convince Aburius that using his position to further a personal quarrel is bad, so he cites his efforts on behalf his *inimici* to show Aburius the lack of self-interest that he ought to show in office. But the allusion also provokes a more general consideration of the way Gracchus behaved as a tribune during the 'trials'. By inviting the reader to reflect on Gracchus' earlier activities, the allusion does not simply recall that he set aside his personal interests to perform his tribunician duties; in the context of the preceding sentence, with its pithy articulation of the purpose of the tribunate, *mandatum pro auxilio ac libertate priuatorum, non pro consulari regno* (39.5.4), it also illuminates Gracchus' motives for doing so. It was pointed out above that Gracchus' defence of Scipio Africanus, in particular his decree offering his *auxilium* at 38.52.10, reflects the original purpose for which the tribunate was established. Gracchus' explanation of a tribune's mandate confirms that for him the tribunate's main function is its original one, i.e. the defence of the *libertas* of *priuati* against tyrannical magistrates. So the description of the tribunate's duties at 39.5.4 illuminates the actions recalled by the allusion at 39.5.5. It clarifies Gracchus' motives for defending his *inimici*, and confirms that he has lived up to his precepts by drawing attention to the fact that he has hitherto dedicated his tenure of the tribunate entirely to defending *libertas* by upholding citizens' right to *auxilium*. Conversely, Gracchus' reference to the help he offered the Scipio brothers lends his claim about the tribunate's function his own exemplary authority. Thus, Gracchus' personal *exemplum* at 38.5.5 not only demonstrates how a tribune ought to use his powers (i.e. with no regard to private interests); it also supports his claim about what a tribune should use his powers for: the defence of citizens' *libertas*.

The speech at 39.5.1-5 is a fitting conclusion to Livy's account of Gracchus' tribunate. By having the tribune present himself as an *exemplum*, the historian elucidates and reiterates important lessons from the tribune's previous appearances in the 'Trials of the Scipiones'. At the same time, making the tribune an *exemplum* in his own lifetime highlights the extraordinary value of Gracchus as a model of tribunician conduct, a point that is further emphasised by the immediate positive influence the *exemplum* has on the outcome of the episode. And, in addition to confirming the value of Gracchus' previous conduct as tribune, his final appearance adds to his already considerable didactic significance. It is quite obvious that Livy has cast Gracchus in the same rôle he made him play in the preceding book. Once again, Gracchus emerges as the defender of the tribunate against a colleague who is abusing the office for personal reasons. The argument that Livy ascribes to Gracchus conveys the tribune's concern for the integrity of the institution, expressed as a desire to protect the power and sacred laws, *potestas et sacratae leges*, of the *collegium* from the disgrace Aburius will bring on it if he persists (39.5.2). This is consistent with the portrayal of Gracchus' concerns during the Scipionic trials, as is his understanding of the primary function of the tribunate, expressed at 39.5.4, as argued above. The final episode in Gracchus' tribunate therefore reinforces his earlier characterisation, reiterating his particular understanding of the magistracy and his commitment to his duties as he understands them.

Ti. Gracchus embodies the best qualities of the tribunate as Livy presents it in Books 21-45. Gracchus only ever uses his position to extend *auxilium* to those who need it, and to counteract his colleagues' abuse of their powers with his right of *intercessio*. As the discussion in the preceding sections of this chapter has shown, the tribunes perform a wider range of functions in the *AUC*, and their ability to legislate, in particular, is depicted as indispensable to the governance of Rome in Livy's third to fifth decades. But tribunician legislation is also often a cause of *discordia*. Gracchus only uses powers intended to defend the *libertas* of Roman citizens; thus, he consistently fulfils the original purpose of the tribunate. In contrast to his opponents and fellow tribunes the Petillii and Aburius, he acts not out of any personal interest or obligation – indeed, Livy stresses his personal animosity towards the Scipiones. Gracchus simply behaves in a manner appropriate to a tribune, using his powers of *auxilium* and *intercessio* to uphold the *libertas* of individual citizens. He is also mindful of his duty to the people in general, for in defending the Scipiones from

shameful and ungrateful mistreatment at the hands of their persecutors he is consciously maintaining the honour of the *populus Romanus*. Admittedly, Gracchus does refuse to bow to the moral authority of his colleagues' unanimity concerning Africanus' appeal at 38.52.8-9 and concerning Asiaticus' arrest at 38.60.3. In the *AUC*, defiant individualism of this sort among tribunes usually generates *discordia*. But, as argued above, Gracchus' defiance of his colleagues is motivated by his dedication to the duties of his office, not by self-interest. For this reason his defiance is not total: he defers to his colleagues' judgement concerning the fine to be exacted from Asiaticus, objecting only to the unbecoming imprisonment of a Roman hero. Gracchus' selflessness in exercising his powers is the reason that, unlike other tribunes who defy their colleagues, his refusal to accept the college's consensus resolves political conflict instead of exacerbating it. And although Gracchus is never depicted as acting at the behest of the senate, he nevertheless acts in accordance with its desires on each occasion. He therefore demonstrates that it is possible for a tribune of the plebs to fulfil his obligations to individual citizens and to the *populus*, while at the same time, independently and of his own accord, fulfilling the wishes of the senate. As such, Gracchus instantiates the *concordia* between senate and tribunate that prevails in Books 21-45, and reinforces the benefits of this *concordia* for the *res publica*.

Livy's treatment of the tribunate has a parallel in the views attributed to the character of Marcus in Cicero's *De legibus*. The discussion of the tribunate in *Leg.* 3.19-26 opposes the conservative attitude towards the magistracy voiced by Marcus with what might be called an abolitionist stance presented by Quintus Cicero, an entirely negative attitude towards the magistracy that favours a radical curtailment of its powers.<sup>326</sup> Quintus is uncompromising in his hatred of the office regards as 'pestilential', 'in sedition and for sedition born' (*Leg.* 3.19: *nam mihi quidem pestifera uidetur, quippe quae in seditione et ad seditionem nata sit*). He sets out an invidious history of the tribunate, highlighting its seditious origins and its worst representatives from C. Flaminius to the Gracchi to Clodius, and concludes by approving Sulla's efforts to limit the harm the tribunes could do by restricting all their powers except that of *auxilium*.<sup>327</sup> Marcus' reply (*Leg.* 3.23-6) is more balanced than Quintus'

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<sup>326</sup> See Dyck 2004: 492-3.

<sup>327</sup> Cic. *Leg.* 3.19-22; see Dyck 2004: 493-503.

diatribe, for, although it advocates the retention of the tribunate in its current form, it recognises the negative as well as the positive aspects of the office. In fact, after conceding that there is something inherently ‘evil’, *malum*, in the power of the tribunate, Marcus pronounces that evil inseparable from the good purposes for which the tribunate was founded.<sup>328</sup> This, in effect, rejects Quintus’ view that reform along Sullan lines is preferable as based on a false premise – that *tribunicia potestas* can be stripped of its potential to cause harm without impairing its potential to do good. Marcus argues that this good consists in tempering *uis populi*: he grants that the Gracchi and many other individual tribunes have stirred up the people, but stresses that, on the whole, the tribunate has secured the *concordia* of the state, putting an end to *seditiones* and protecting the ruling order from popular *invidia* by ensuring that the plebs feels no need to resort to dangerous struggles, *periculosae contentiones*, for its rights.<sup>329</sup>

Andrew R. Dyck observes that Marcus’ response to his brother’s recitation of the crimes of individual tribunes, specifically the *duo Gracchi* (*Leg.* 3.24), is ‘based on sinking’ the individual troublemakers ‘into the mass of tribunes and thus diluting their significance’, and then adding ‘palliative factors’, i.e. describing the overall effects of the tribunate in mitigating plebeian discontent.<sup>330</sup> In Books 21–45 Livy takes much the same approach to the tribunate. There is some evidence that Livy deliberately downplayed certain episodes of tribunician dissension, but he did not shy away from it altogether. Like Marcus in the *De Legibus*, Livy acknowledges that disturbances caused by individual tribunes are a fairly regular feature of Roman politics, but his narrative overwhelms these negative instances with a much larger body of cases – some strikingly positive, many others quite unremarkable – of tribunes who contribute constructively to the running of the state. Livy’s depiction of the tribunate in Books 21–45 does not suggest that the *res publica* would benefit from the reduction of *tribunicia potestas*. On the contrary, the tribunate emerges as an integral component in the prevailing *concordia*, a willing and typically subordinate partner to the senate in the government of Rome – which is just what Marcus would

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<sup>328</sup> Cic. *Leg.* 3.23: *ego enim fateor in ista ipsa potestate inesse quiddam mali, sed bonum quod est quaesitum in ea sine isto malo non haberemus* (‘For I grant that there is in your [tribunician] power itself something evil; but we cannot have the good that is aimed at in that power without that evil of yours’).

<sup>329</sup> Cic. *Leg.* 3.23–4; see Dyck 2004: 505–9.

<sup>330</sup> Dyck 2004: 508–9.

have Quintus believe in the *De legibus*. Marcus suggests that the tribunate allows the people to have real *libertas* while inducing them to yield to *auctoritas principum*.<sup>331</sup> Livy would probably have agreed at this point in his history, since his tribunes, while protective of *libertas populi*, generally yield to *auctoritas principum* themselves.

The *concordia* that generally prevails between the tribunate and senate in Livy's third to fifth decades is a key feature of his mature Roman state, which distinguishes it from the nascent *libera res publica* of the earlier books. In the later books, the tribunate no longer stands in opposition to the senate. Individual tribunes do, of course, continue to cause trouble in various ways, and, as the next chapter will show, Livy never allows his readers to forget the tribunate's potential to generate political discord. But individual cases of tribunician misbehaviour notwithstanding, the overall impression Books 21-45 give is of the tribunate as a fully integrated and useful component of the Roman state, one that works in concert with the other magistrates and defers to the senate for the good of the *res publica*.

### **2.3 Oratory in Roman politics**

Oratory has always loomed large in modern perceptions of the Roman Republic, but in recent years it has come to be recognised as one of the defining features of Republican political culture, essential to understanding both the practice and the ideology of politics. Much of the day-to-day business of politics was conducted through speeches.<sup>332</sup> At meetings of the senate matters of public interest, from legislation to war to foreign policy, were introduced and discussed by means of speeches, with the presiding magistrate calling on each senator in turn to present his opinion on the matter.<sup>333</sup> Outside of these closed sessions, oratory was the focus of the public meetings known as *contiones*, held in the Comitium or elsewhere around the Forum, at which magistrates introduced themselves after their election to office, read out *senatus consulta* and the reports of commanders in the field, and proposed

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<sup>331</sup> Cic. *Leg.* 3.25; Dyck 2004: 509-10.

<sup>332</sup> The occasions for and contexts of oratory on political matters are discussed by Fantham 1997: 111-22; Lintott 1999: 42-6; 75-82; Alexander 2007.

<sup>333</sup> For overviews of senatorial discussions and oratory, see Bonnefond-Coudry 1989: 452-520; Lintott 1999: 75-82; Ramsey 2007. Of course, not every senator would have taken the opportunity to speak at length, since it was sufficient to register agreement with a previous speaker; on the norms and extent of participation in these discussions, see Ryan 1998, esp. 72-95 on the right to speak of the so-called *pedarii*.

and debated legislation.<sup>334</sup> Trials too were often fora for politically-charged oratory.<sup>335</sup> A number of important studies have shown that, as well as being inseparable from the practice of politics, oratory reflected and reinforced the ideology at the heart of Roman political culture. The *contiones* were particularly important in this regard, since it was here that the political élite engaged directly with an audience that (regardless of its actual composition) represented the wider political community, the *populus*.<sup>336</sup> Contional oratory was therefore an important channel of communication between élite and non-élite – albeit an asymmetrical channel, which unlike the Athenian *ekklesia* did not permit the audience to respond or contribute freely, since all speakers had to be called to the Rostra by the presiding magistrate – and it has been identified as one of the means by which the ruling order articulated its right to govern, thereby affirming the broad ideological consensus on which the *res publica* was founded.<sup>337</sup> In a seminal study of republican *contiones*, Robert Morstein-Marx identified a set of tropes typical of the rhetoric employed at public meetings, which he identified as the basis of the ‘cultural hegemony’ exercised by the senatorial aristocracy.<sup>338</sup> He found that contional oratory was based on appealing to the rights and interests of the *populus*, regardless of the speaker’s political disposition or his stance on that matter at issue (indeed, this appears to have been true even when the orator’s position was, at least from a modern perspective, obviously inimical to popular interests). But while contional rhetoric emphasised popular rights and power,

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<sup>334</sup> The rôle of public oratory and *contiones* in Roman politics has been a subject of much scholarly debate since Fergus Millar (1984) stressed that legislation was shaped by ‘speeches, which were made not only, or even primarily, in the ‘sacred Senate’, but in the open space of the Forum, before the ever-available crowd’; e.g. Millar 1986; 1998; Pina Polo 1989; 1995; 1996; Hölkeskamp 1995; 2004: 219-56; Laser 1997: 138-82; Fantham 2000; Mouritsen 2001: 38-89; 2017: 72-94; Morstein-Marx 2004; Tan 2008; Jakobson 2004; 2014; see also the sections on *contiones* in Sumi 2005 and the relevant chapters in Steel and van der Blom 2013. For an overview of the evolution of recent scholarship on *contiones* see Mouritsen 2017: 61-7. The term *contio* could also be used of written accounts of the speeches given at public meetings: see Mouritsen 2013.

<sup>335</sup> See Gruen 1968.

<sup>336</sup> On attendance and the composition of *contiones*, see Mouritsen 2001: 18-25, 38-89. Mouritsen’s argument that attendance of the *contiones* was extremely low is generally accepted, but the composition of contional audiences is still debated: Mouritsen argues that attendance was largely limited to the economically well-off who possessed free time, occasionally supplemented by hired crowds; Jehne 2006: 226-32, however, following Mommsen 1854-5: 2.94, maintains that there was a distinct *plebs contionalis* made up of urban citizens who regularly attended meetings.

<sup>337</sup> The study of the ways in which the senatorial élite communicated, and so maintained, its political dominance has been pioneered by Hölkeskamp, who places *contiones* and oratory alongside triumphs and *pompa funebris* as consensus-building spectacles: 1995; 2004: 219-56; 2010: 72-3, 102-3; 2013.

<sup>338</sup> Morstein-Marx 2004: 204-78, esp. 230-40. He has since modified his views on the Roman élite’s ‘cultural hegemony’: Morstein-Marx 2013.

it did not challenge the traditional authority of the senate as an institution: instead, attacks on members of the political élite were framed as opposition to tyrannical cliques or to a corrupt and degenerate *nobilitas*.<sup>339</sup> Morstein-Marx described this complex of rhetorical tropes as ‘contional ideology’, and noted that it essentially reflects the broad consensus on which the Republican political order was based.<sup>340</sup> It has long been recognised that this consensus rested upon the twin pillars of *auctoritas senatus*, senatorial authority, and *libertas populi*, popular freedom and sovereignty, both of which were appealed to (to varying degrees) by orators addressing public audiences.<sup>341</sup> M. A. Robb, however, has pointed out that appeals to *libertas populi* were no more confined to *contiones* than appeals to *auctoritas senatus* were to sessions of the senate.<sup>342</sup> The rhetoric of senatorial debates and the law courts drew on the same ideology as the rhetoric of the public meetings; only the emphasis placed on the different elements of this ideology varied, according to the context, audience, or the particulars of an argument. Oratory therefore both reflected and articulated the core values of the *res publica*. In so doing, oratory reinforced the political consensus.

### 2.3.1 Oratory in Livian historiography

Oratory was also a prominent feature of classical historiography.<sup>343</sup> Herodotus and Thucydides, perhaps in imitation of epic poetry, made use of direct and indirect discourse in their narratives by attributing speeches to historical figures. Their heirs in the genre followed their example, and by Livy’s day the Romans too had long been following this convention.<sup>344</sup> Like their Greek counterparts, Roman historians used

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<sup>339</sup> Morstein-Marx 2004: 230-40; 2013: 42-3; followed by Yakobson 2014: 290, 293-300.

<sup>340</sup> Morstein-Marx 2004: 239; 2013: 43.

<sup>341</sup> The centrality of *senatus auctoritas* and *populi libertas* to the rhetoric of Roman politics is recognised and discussed with characteristic cynicism by Syme 1939: 152-6.

<sup>342</sup> Robb 2010: 69-93.

<sup>343</sup> Marincola 2007 provides a concise but edifying overview of the uses of oratory in classical historiography.

<sup>344</sup> Exactly when Roman writers adopted this convention cannot be known given the fragmentary state of early Roman historiography. Cato’s *Origines* contain the earliest extant examples of oratory embedded in a Roman historical narrative, but these were written versions of his own speeches *Pro Rhodiensibus* and *Contra Galbam*: see Cornell *FRH* 1.213-14 and Briscoe *FRH* 1.262, with *FRH* 5 T12-13 and the corresponding fragments F87-93 and F104-7. Peter’s conjecture (*HRR* 1.ccxviii) that Coelius Antipater (fl. late second century) was the first Roman historian to write full-length speeches enjoys wide currency, but should not be taken for granted. In fact, Coelius’ monograph on the Hannibalic War is merely the earliest Roman historical text from which several excerpts from longer speeches survive; it seems likely that earlier writers working in the Greek tradition, such as Fabius Pictor, composed speeches for their histories too: see Briscoe *FRH* 1.262. It is therefore possible that oratory had been a feature of Roman historiography since its beginning.

speech in a variety of contexts, including the depiction of politics. The works of Sallust, written about a decade before Livy started working on the *AUC*, demonstrate the versatility of speech in contemporary Roman historiography. They contain private dialogues between individuals, speeches given by generals before battle, and political oratory and debates, which, although inspired by Greek models, have been suitably adapted to the Roman political contexts of the senate and the *contio*.<sup>345</sup>

There is therefore nothing exceptional about Livy's inclusion of oratory in his depiction of politics. Political oratory was a commonplace of the historical genre, and as such its mere occurrence in Livy cannot in itself be interpreted as a reflection of or a comment on the rôle of oratory in Roman politics. The political speeches in the *AUC* perform many of the same narrative and dramatic functions as speeches in other contexts. The change of pace and perspective occasioned by political oratory contributes to the *uariatio* of the narrative, while the shift in perspective, from omniscient narrator to internal speaker, can provide a more immediate, more emotive evocation of historical circumstances, heightening the narrative's dramatic impact. Similarly, a speech can enhance the characterisation of an historical figure by letting the speaker's own words convey his personality. Quintilian was particularly impressed by Livy's ability to evoke situations and personalities in his *contiones*: reflecting on the historian's best qualities, he remarks that

in contionibus supra quam enarrari potest eloquentem ita quae dicuntur omnia cum rebus, tum personis accommodata sunt (*Inst.* 10.1.101)

in his *contiones* he is eloquent beyond description, so well are all the things said fitted to both circumstances and characters[.]

The historian would have been gratified by this praise, for he no doubt aimed to please his readers by the eloquence of his *contiones* and other orations.<sup>346</sup> His political speeches contribute to the creation of the dramatic and compelling account of Roman history that the *AUC* was intended to be.

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<sup>345</sup> Interestingly, of the two speeches that Cato is known to have including in his *Origines*, one, the *Pro Rhodiensibus*, was delivered in the senate, the other, *Contra Galbam*, at a *contio*.

<sup>346</sup> As Marincola 1997: 112; 140 notes, Livy's wry comment about successive generations of historians taking up the pen in the belief that they can write more eloquently than their predecessors (*praef.* 2) does not explicitly indicate that this is one of Livy's purposes for composing his history, but nor does it rule out that interpretation. The classic study of the technical and literary qualities of Livy's speeches is Ullman 1929.



But the *AUC* was meant to edify as well as to entertain, its speeches no less than the rest of the narrative. Livy's use of speech as a medium for moral instruction has been explored in some detail recently, notably by Jane Chaplin. Building on Joseph B. Solodow's and Andrew Feldherr's analyses of the *AUC*'s use of internal audiences, Chaplin shows that Livy employs speeches to inform and shape his readers' interpretations of the *exempla* cited in those speeches.<sup>347</sup> Since speeches (particularly those in *oratio recta*) place the reader in a similar position to that of the audience within the text, the responses of the internal audience to a speech can guide the responses of the external audience. This is true even of cases in which a speech's audience ignores good counsel or succumbs to bad advice or demagogic manipulation, since the external audience has the opportunity to learn from the internal one's mistake from its superior vantage point outside of the narrative.<sup>348</sup> Thus, in addition to its aesthetic and narrative functions, oratory in Livy has an important didactic rôle. And given that they bear directly on citizens' behaviour in public affairs, it is to be expected that Livy's political speeches, too, have a didactic function.

The next two chapters will show that individual political speeches in the *AUC* certainly do offer instruction on the sort of civic behaviours citizens ought to emulate or avoid. Whether these speeches, taken together, offer any general reflections on the rôle of political oratory in the *res publica* as Livy conceived it, or demonstrate any engagement with the historical rôle of oratory in Roman politics, is another matter entirely. As ever, the chronology of Livy's life and the absence of evidence of his involvement in politics raises doubts about his knowledge and understanding of Republican oratory and its political significance. Morstein-Marx sums up the problem succinctly in his justification for discounting Livy's *contiones* as evidence for historical practice: 'Livy's direct knowledge of the realities of late-Republican political life in the city is suspect, and in any case the *contiones* in the extant portion of his text belong so far in the distant past that the relationship between his recreation and his own present is highly problematic.'<sup>349</sup>

On closer examination, however, the relationship between Republican reality and the *AUC*'s recreation of it is revealed to be less problematic than might appear at

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<sup>347</sup> Solodow 1979: 257-9; Feldherr 1998; Chaplin 2000, esp. 50-105.

<sup>348</sup> Chaplin 2000: 103-5.

<sup>349</sup> Morstein-Marx 2004: 30-1.

first glance. To address Morstein-Marx's last point first, Livy's approach to *contiones* and other speeches can be reconstructed fairly easily from the evidence in the surviving books. It is safe to say that the speeches in the *AUC* are not generally based on contemporary records. It is doubtful whether any speeches survived – if, indeed, any were ever recorded – from the period described in Livy's first decade, but copies of speeches attributed to prominent figures from the years covered in the other extant books do appear to have been available, and at least some of these were authentic.<sup>350</sup> In general, however, the historian seems to have followed ancient historiographical convention and avoided reproducing the material he found in these documents, since 'to reproduce another's words at any length not only deprived an historian of the opportunity of literary challenge but also...infringed generic conventions of stylistic homogeneity.'<sup>351</sup> This is certainly the impression that Livy gives on the occasions when the orations of Cato the Elder were available to him.<sup>352</sup> In two cases, instead of quoting or even paraphrasing the content of Cato's speeches, Livy simply notes that the originals are extant, implicitly referring his readers to them.<sup>353</sup> In a third case Livy

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<sup>350</sup> The elder Cato published a large number of his own speeches, and these appear to have been readily available in the first century. Malcovati (*ORF*<sup>4</sup> 8) identifies references to seventy-nine separate orations, which gives some idea of the extent of the ancient Catonian corpus. It may well have been quite a lot more extensive, since although none of the surviving fragments pre-dates Cato's consulate, Cornelius Nepos (*Cat.* 3.2) claims that the orator had been composing speeches since his youth (*ab adulescentia confecit orationes*). Other texts purporting to be mid-Republican speeches were also in circulation, e.g. the copy of Q. Caecilius Metellus' *laudatio* delivered at the funeral of his father Lucius c. 221 that was used by Pliny the Elder (*HN* 7.139-40 = *ORF*<sup>4</sup> 6.1). Some of these, however, may have been forgeries. Livy himself expresses doubt about the authenticity of speeches ascribed to Scipio Africanus and Ti. Sempronius Gracchus (38.56.5-7).

<sup>351</sup> Woodman 2010: 306; cf. Miller 1956: 305; Walsh 1961: 219-20. Cato is the only definite exception to this rule among Roman historians, and a partial exception at that, since as noted above the *oratio scripta* that he included in the fifth book of his *Origines* (Liv. 45.25.3) and the other that he inserted into the work shortly before his death (Cic. *Brut.* 89) were both his own: Woodman 2010: 306; Cornell *FRH* 1.213-14. Cicero's reference to an oration of Q. Metellus in C. Fannius' *Annales* (*Brut.* 81: *contra Ti. Gracchum exposita est* [sc. *oratio*] in *C. Fanni annalibus*) can probably be accepted as evidence that Fannius too incorporated authentic speeches in his histories, but the precise implications of Cicero's Latin are contested, and some take it to suggest abridgement or even fabrication: see Douglas 1966: 71; Gratwick 1982: 151; Woodman 2010: 306 n. 33; Cornell *FRH* 1.249. A comparison between the record of the Emperor Claudius' oration inscribed on the Lyons Tablet (*CIL* 13.1668 = *ILS* 212) with the address Tacitus puts in his mouth at *Ann.* 11.24 suggests that, when an historian did wish to recount an oration that was already available in written form, he drew on the original to compose a version of it in his own distinct style and in line with his historiographical agenda: Miller 1956: 305-6 and *passim*; Griffin 1982; Woodman 2010: 306. Cf. the single 'Philippic' that Cassius Dio gives Cicero at 45.18-47, which evinces a debt to a number of the original speeches without resembling any one of them in particular: see Fischer 1870: 1-28 (arguing that Dio draws directly on the Latin original); Haupt 1884: 687-92 (who proposes the use of an intermediate Greek source); Millar 1964: 54-5; Burden-Stevens 2015: 58-70.

<sup>352</sup> Briscoe 1981: 39-40; Haimson Lushkov 2010: 119-20.

<sup>353</sup> 38.54.11 (Cato's speech in support of the bill to investigate the embezzlement of money taken from Antiochus); 45.25.3 (Cato's speech *Pro Rhodiensibus*).

does provide a brief summary of part of a speech by Cato, one of several *acerbae orationes* given during the latter's famous censorship that, according to the historian, were still in existence (39.42.6-7). This citation is occasioned by a discrepancy in Livy's sources. Among other charges (which the historian does not relate), Cato's speech included an account of L. Quinctius Flaminius' murder of a Gallic deserter, which Livy sets alongside the slightly different version of the crime given by Valerius Antias (39.42.8-43.5). The only other instance in which Livy reproduces material from a published speech in any detail also results from a problem with his evidence. Among the many deficiencies and conflicts in his sources for the 'Trials of the Scipios', the historian highlights two seemingly contradictory orations attributed to Scipio Africanus and Ti. Sempronius Gracchus (38.56.5).<sup>354</sup> Livy finds the latter so troublesome that he admits that an altogether different account of the circumstances surrounding the prosecution of L. Scipio is necessary to reconcile his narrative to this speech.<sup>355</sup> To illustrate his point, he summarises at least part of Gracchus' oration, which does indeed differ markedly from the speech Livy attributes to him only a few chapters before (38.56.8-13).<sup>356</sup> In this case, as in the matter of Cato's invective against L. Flaminius, Livy draws on a recorded speech to illustrate a problem with his sources. In the absence of any specific evidentiary need, however, it is reasonable to assume that the historian deliberately avoided incorporating material from published speeches into his narrative, as he did in the case of Cato's other speeches. The *AUC* does include one long speech in *oratio recta* by Cato, a defence of the *lex Oppia* at a *contio* during Cato's consulate (34.2-4), but this is widely agreed to be an invention of Livy's.<sup>357</sup> Although the speech seems to contain Catonian elements, its style is distinctly Livian, and it serves the purposes of Livy's narrative rather better than an authentic oration is likely to have done (in contrast to the historian's

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<sup>354</sup> Livy refers only briefly to the Scipio oration, noting that the *index* gives M. Naevius as the name of Scipio's accuser, while the speech itself refers to the prosecutor only as *nebulo* and *nugator*: 38.56.6. Livy's comment about the two orations, *si modo ipsorum sunt quae feruntur* (38.56.5), expresses some doubt about their authenticity. Livy's doubts were justified, for the speech attributed to Gracchus should probably be dated to Caesar's *dictatura perpetua* by its reference to Scipio reproaching the people for wanting to make him *perpetuus consul et dictator* (38.56.12), as Mommsen 1879: 502-10 suggests; see Briscoe 2008: 200-1 for a discussion of the oration's date.

<sup>355</sup> 38.56.8: *alia tota serenda fabula est Gracchi orationi conveniens...* See Haimson Lushkov 2010: 120-3 on Livy's difficulties in dealing with these *scriptae orationes*.

<sup>356</sup> Cf. Livy's previous account of Gracchus' defence of the Scipiones: 38.52.10-53.4.

<sup>357</sup> E.g. Briscoe 1981: 39; Levene 2000: 184; Woodman 2010: 306-7. The hortatory address that Cato gives before battle at 34.13.5-9 can be discounted because, as Briscoe (*ibid.*) remarks, it is 'purely conventional'.

difficulties with the speeches ascribed to Scipio and Gracchus): it articulates the corrupting power of wealth and extravagance and defends traditional morality and self-restraint through the appropriate figure of Cato, and simultaneously conveys a sense of the man's famously stern character and his moralising rhetoric.<sup>358</sup> Moreover, there are no references in any other classical text to Cato giving a speech about the *lex Oppia*; in fact, it has been suggested that Livy chose this occasion to compose a speech for Cato precisely because there was no such speech in the Catonian corpus.<sup>359</sup> Regardless of whether this argument *ex silentio* is accepted – indeed regardless of whether an authentic oration on the *lex Oppia* was available – it is clear that Cato's speech in Book 34 is substantially Livy's own creation.

It seems that Livy did not, as a rule, model his characters' orations on published speeches. His use of the speeches attributed to historical figures by his predecessors is more complicated (and, as ever, made more so by the paucity of evidence), but here too his methods can be reconstructed fairly easily using the remains of one of his sources. Enough of Polybius' work survives to permit instructive comparisons to be drawn with Books 21–45, for which the Megalopolitan's histories were a major source.<sup>360</sup> On several occasions in these books Livy can be shown not only to have drawn his information from Polybius, but to have modelled his narrative, including his speeches and dialogues, on the Greek's. In many cases, however, Livy also alters his source material. Often these alterations are purely technical, with Livy rearranging Polybian material to conform to the structural conventions of formal rhetoric.<sup>361</sup> Sometimes he makes slight embellishments for dramatic effect, as in the case of Livy's version of the exchange between T. Quinctius Flaminius and Philip V upon the latter's arrival at Nicaea.<sup>362</sup> The substance of the dialogue is the same as

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<sup>358</sup> Cf. Briscoe 1981: 42. A number of analyses have concluded that the speech incorporates elements of genuine Catonian rhetoric, although the nature of those elements is disputed: Paschkowski 1966: 107–25, 248–67 argues that the speech imitates Cato's style of rhetoric; Tränkle 1971: 9–16 denies any stylistic resemblance, but suggests that it does reflect authentic Catonian themes and arguments; Briscoe 1981: 40–2 too is critical of Paschkowski's analysis, but allows that specific sections and phrases may imitate Cato (see his comments on 34.2.13–3.3; 34.3.9; 34.4.2, 3, 14 on pp. 48–51, 53–4) while stressing that the overall style is distinctly Livian; Levene 2000: 184 suggests that the verbal and thematic similarities between this speech and that of the younger Cato in Sall. *Cat.* 52.2–36 may indicate that both historians modelled their speeches on Catonian material.

<sup>359</sup> Briscoe 1981: 39, 42.

<sup>360</sup> The most detailed study of Livy's use of Polybius is Tränkle 1977; see also Tränkle 1972; Briscoe 1993. Levene 2010: 126–63 has recently demonstrated, *contra* Tränkle 1977: 193–241, that Livy also drew on Polybius throughout his third decade as well as for the later books.

<sup>361</sup> See Walsh 1961: 221, with examples at n. 2.

<sup>362</sup> Liv. 32.32.12–16; cf. Polyb. 18.1.6–9

it is in Polybius, but Livy presents it in *oratio recta* to heighten the vividness of the encounter; he also expands on Philip's initial reply slightly to reflect the king's character: 'To this he replied in a proud and regal spirit: "I fear none except the immortal gods..."' (32.32.14: *ad hoc ille superbo et regio animo: neminem equidem timeo praeter deos immortales*).<sup>363</sup>

In other cases, however, Livy's additions are more significant. Polybius has L. Aemilius Paullus denounce Rome's armchair generals for their frivolous chatter about the conduct of the Macedonian war, which, Paullus argues, does nothing to advance the common good, but often undermines it along with the authority of the commanders whom they criticise (29.1.1-3). In Livy too Paullus gives a speech on the same topic, on the occasion of his *profectio* in 168 (44.22.1-15). Livy's version is longer and is presented in *oratio recta*, but the similarities in theme and a number of close verbal parallels suggest that it draws directly on the Polybian original.<sup>364</sup> As with the dialogue between Philip and Flamininus, most of Livy's expansions on Polybius are aesthetic, embellishing but adding little of substance to Paullus' admonishments. Because Polybius' version of the speech exists only as an excerpt the extent of Livy's embellishments is difficult to gauge. But one part of the speech in the *AUC* that is almost certainly original represents a more substantial addition to the Greek's version: after Paullus argues that idle talk at Rome can undermine a commander's efforts in the field (as he does in Polybius), he illustrates his point with a reference to the uncommon fortitude of Q. Fabius Maximus Verrucosus in the face of slander.

'neque enim omnes tam firmi et constantis animi contra aduersum rumorem esse possunt <quam> Q. Fabius fuit, qui suum imperium minui per uanitatem populi maluit quam secunda fama male rem publicam gerere (44.22.10).'

'For not everyone can be as firm and steadfast in spirit in the face of hostile gossip as Q. Fabius was, who preferred his *imperium* to be diminished by the fickleness of the people rather than conduct public affairs badly for the sake of renown.'

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<sup>363</sup> See Briscoe 1973: 230; Tränkle 1977: 121-2.

<sup>364</sup> It is possible that Livy's version is based only indirectly on Polybius, via an intermediate annalistic source, or that both authors' draw independently on the same earlier edition of the speech. However, the close resemblance of Livy's syntax to Polybius' at several points is more easily explained by a direct relationship between the two: see Nissen 1863: 263-4; Briscoe 2012: 531; cf. Walbank 1979: 361.

The use of an *exemplum* by a speaker, especially an *exemplum* that alludes to matters described earlier in the *AUC*, is a distinctly Livian device which strongly suggests that this sentence is his own original addition to Polybius' version. And despite its brevity, the reference to Fabius Maximus significantly enriches the speech. Many of Livy's readers would have recognised the allusion, signalled by the word *rumor*, to Ennius' famous description of Fabius' achievement:

unus homo nobis cunctando restituit rem.  
noenum rumores ponebat ante salutem (Enn. *Ann.* fr 363-4 Sk.).<sup>365</sup>

One man by delaying restored our state to us.  
For he did not put slanders before security.

These hexameters were apparently well known in Livy's lifetime.<sup>366</sup> As such, Fabius was probably a byword for resilience in the face of *rumor*, and hence a natural choice of exemplar for the quality that Paullus is extolling. (Paullus' reference to the *cunctator*'s willingness to sacrifice his reputation for the public good also demonstrates the truth of Ennius' next line: 'So now afterwards and evermore the man's glory stands out' (Enn. *Ann.* fr. 365 Sk.: *ergo postque magisque uiri nunc gloria claret*). The reference to Fabius also recalls Livy's own account of the attacks incurred by the dictator for his delaying strategy in Book 22. Livy represents these attacks as a series of public speeches by demagogues, which succeed in undermining public confidence in Fabius' strategy and ultimately led to the disastrous confrontation with Hannibal at Cannae (22.14-38). This narrative (which will be examined in detail in Chapter 4.2) demonstrates the dangers posed by unbridled public discourse in times of war, which makes Paullus' reference to Fabius particularly apt in the context of his speech. These inter- and intratextual resonances amplify the exemplary power of the reference. At the same time, the Fabius *exemplum*, with the specific cultural associations it would have possessed for Livy's audience, gives a particularly Roman significance to the general lesson that Polybius' Paullus offers. The effect is not only to make Paullus' argument more pertinent to Livy's Roman readers, but also in a sense to claim the wisdom of the argument for

<sup>365</sup> See Stanton 1971: 53; Skutsch 1985: 530, who notes that Livy's echo actually disregards the first line of the fragment

<sup>366</sup> The first line, at least, is quoted by Cicero (*Att.* 2.19.2) and paraphrased by Vergil (*Aen.* 6.846), Ovid (*Fast.* 2.242), Augustus (Suet. *Tib.* 21.5), and Livy himself (30.26.9). Although the full 'set' of three lines concerning Fabius' achievement, Enn. *Ann.* fr. 363-5 Sk., is quoted by only by Cicero (twice: *Sen.* 10; *Off.* 1.84), the verses were presumably familiar to educated Romans; see Stanton 1971: 52-6; Elliot 2009: 533; Roller 2011: 182.

the Roman nation. Polybius' version of the speech articulates a universal argument against the harm done by unguarded talk and slander. Livy's version, however, may be taken to suggest that the ability to recognise and resist the dangers of *rumor*, an ability demonstrated first by Fabius Maximus, then by Paullus, is a characteristically (if not necessarily uniquely) Roman virtue. Here, as elsewhere, Livy 'Romanises' Polybian material with the addition of a Roman *exemplum*. Finally, the consul's recollection of Fabius' mistreatment by the people contributes to Livy's depiction of Paullus as an exemplary figure in his own right, by foreshadowing Paullus' similar mistreatment the following book. After his right to a triumph is challenged by his soldiers and by a rabble-rousing tribune of the plebs, Paullus is defended in a long oration by M. Servilius (45.35-9). In his defence of the discipline imposed by Paullus on his army, Servilius reminds his audience about M. Minucius and Fabius Maximus, the most recent and memorable exemplars of "what disasters were suffered through the *ambitio* of generals" and "what victories were accomplished through sternness of command" respectively.<sup>367</sup> Like Paullus at 44.22.10, Servilius invokes Fabius as the epitome of a commander who puts military necessity ahead of his own reputation; his indirect comparison of Paullus with the *cunctator* affirms that Paullus also embodies this Fabian virtue. Thus, Paullus' reference to Fabius establishes a thematic link between the two figures from the very beginning of the sequence of events that will culminate in the debate over his triumph. This single sentence reflects Livy's ability to expand beyond the thematic limits of his source material, and it is followed by a section which has no parallel in Polybius. At 44.22.11-13 Paullus invites advice from experienced soldiers and knowledgeable people who are willing to accompany him into the field. Unlike the Fabius *exemplum*, there is nothing distinctly Livian about this section of Paullus' speech, so it is not impossible that something similar appeared in Polybius' original version but was omitted by the excerptor (certainly, it

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<sup>367</sup> 45.37.11-12: *'haec sicut ad militum animos stimulandos aliquem aculeum habent, qui parum licentiae parum auaritiae suae inseruitum censent, ita apud populum Romanum nihil ualuissent, qui ut uetera atque audita a parentibus suis non repetat, quae ambitione imperatorum clades acceptae sint, quae seueritate imperii uictoriae partae, proximo certe Punico bello quid inter M. Minucium magistrum equitum et Q. Fabium Maximum dictatorem interfuerit meminit'* ('Just as such words have a certain sting to goad the hearts of soldiers, who rate [Paullus] too little devoted to their licentiousness, their greed, so they would have no effect on the Roman people, who need not revisit the old stories they heard from their parents, of what disasters were suffered through the *ambitio* of generals, of what victories were accomplished through sternness of command, when it surely remembers what a difference there was between M. Minucius the *magister equitum* and Q. Fabius Maximus the dictator in the recent Punic War').

is the sort of practical advice that Polybius favours). On the other hand, the preceding reference to Fabius and his rôle in Book 22 also recalls the *cunctator*'s exchange with the speaker's father in that book. At 22.39 Fabius advises the elder L. Aemilius Paullus on the challenges he will face and the safest strategy to adopt on the imminent campaign against Hannibal. It is possible that the consul of 168's receptiveness to military advice, if it is original to Livy, is intended to recall his father's.

These examples show that Livy's use of Polybius as a source for his orations is flexible and varied: at times, Livy follows Polybius closely, even mimicking his syntax; at others, he adds to the original material, and these additions themselves vary in substance and importance. Livy's practice is not specific to his use of Polybius' speeches, but reflects his relationship with the Greek as a source in general. Older scholarship tended to regard Livy as more or less faithful to Polybius where the latter was the main source for the *AUC*, making only insubstantial additions to the original material. But as Livy's extension to Paullus' oration at 44.22.10 (and perhaps 44.22.11-13) shows, even minor additions can have a profound significance for the understanding of a speech. And more recently attention has been drawn to the way Livy often challenges Polybius directly, either in his account or in his interpretation of events, even while drawing on the Greek history to construct his own. Again, seemingly minor changes can have a major impact on the depiction of history. On other occasions, however, Livy's challenges to Polybius are more obvious. The L. Aemilius Paullus who was consul in 216 is given a long speech in Polybius 3.108.6-109.12, in which he exhorts his troops and outlines the reasons the Romans have to hope for victory in the imminent campaign against Hannibal. In Livy, however, the consul gives only a short address at a *contio*, in *oratio obliqua*, and in it he offers only a warning (22.38.8-12). There are no words of encouragement here, indeed Paullus is described as speaking 'more truthful[ly] than pleasing[ly] to the people' (22.38.8: *uerior quam gratior populo*) as he adumbrates the perils of entrusting the campaign to his inexperienced and audacious colleague C. Varro; the only hope he can offer is that a campaign conducted *caute ac consulte*, 'carefully and with deliberation' (22.38.11) will turn out better than one conducted with *temeritas*, which as hitherto proved both 'stupid and unfortunate' (22.38.12). Livy's speech is completely incompatible with Polybius', because at this point Livy's narrative has diverged from that of Polybius. In the Megalopolitan's history all are eager to meet Hannibal in battle, including the senate and Paullus, as his oration demonstrates. In Livy, however,



the Cannae campaign forms part of an extended narrative that began with Minucius' challenge to Fabius Maximus, a narrative designed to illustrate (among other things) the wisdom and necessity of the Fabian strategy (see Chapter 4.2). In Livy, then, the Romans' reckless eagerness for battle is attributed to the demagoguery of Fabius' critics, the most important of whom is C. Varro, whose consulate leads directly to the disaster at Cannae – the ultimate vindication of Fabius' cautious approach. In Polybius too Varro is responsible for the Roman defeat, but there the defeat is the result of the consul's poor tactical decisions at Cannae, whereas in Livy the entire campaign exemplifies the dangers of a confrontational strategy at this stage in the war. The contrast between the two speeches therefore reflects the contrasting rôles assigned by each historian to Paullus: in Polybius, the consul and his words convey the Romans' confidence in the great army they have assembled to meet Hannibal; in Livy, the consul voices the concerns of those who are wise enough to recognise the danger of direct confrontation with the Carthaginian.

In the absence of a larger body of *comparanda*, it is impossible to be certain that Livy's engagement with Polybius reflects his approach to his sources in general. It seems likely, however, that Livy's practice did not vary too greatly between sources, and that his use of speeches he found in the works of other historians was equally flexible and varied, ranging from close imitation to subtle alteration to outright contradiction of his source material. So while Livy rarely drew on published speeches (authentic or otherwise), he did model some of his orations on those of earlier historians. This is not to say that all of his speeches derive from his sources: some, such as Cato's *contio* on the repeal of the *lex Oppia*, are probably original compositions. Again, in the majority of cases the dearth of evidence makes it impossible to tell whether a given speech is based on a predecessor's or is original. Fortunately, this distinction makes little difference for the purposes of criticism. Livy was under no constraint to include all of the material available to him in his narrative, any more than he was to preserve it unaltered. The incorporation of another author's work more-or-less unchanged into the *AUC* therefore reflects a deliberate authorial decision, a choice that Livy made to use alien material to serve his own (narrative or didactic) purposes. This act of appropriation disconnects the other author's material from its original context, and by making it serve a function within the *AUC* effectively renders it Livy's own. Quintilian certainly treats Livy's speeches as such when he calls this historian 'eloquent beyond description' in matching his *contiones* to

characters and circumstances (*Inst.* 10.1.101).<sup>368</sup> Modern critics are justified in following Quintilian's example and approaching the orations in the *AUC* as Livy's own work, because regardless of how much content they owe to other sources they are ultimately the result of his discrimination and his perspective on the past.<sup>369</sup>

To return to Morstein-Marx's objection, the relationship between Livy's recreation of *contiones* (and other political speeches) in his surviving books and his present is not as problematic as it might seem. The speeches are unlikely to include any authentic ancient material because authentic material was rarely, if ever, available; only on exceptional occasions do they draw on published orations, the authenticity of which is sometimes doubtful. Insofar as the speeches in the *AUC* are based on earlier sources at all, they draw on the work of other historians, which in the majority of cases must represent imaginative reconstructions of what might have been said in a given context, rather than approximate records of what actually was said. But since the decision to ignore or incorporate an oration from a predecessor's work into his own, and the decision to embellish or alter it and to what extent, was Livy's alone, the speeches in the *AUC* are to be regarded as products of the author's present, governed by his personal interpretation of history and his understanding of its relevance to the contemporaries for whom he wrote.

So, since the political speeches in the *AUC* are ultimately products of the author and his own day, the question is whether they bear any real resemblance to the political oratory of the late Republic. The value of the *AUC* as a political text is of course not dependent on the accuracy of its representation of Republican politics. Livy could fulfil his didactic aims – provide worthy models for emulation or avoidance and illuminate the rôles of morality in Rome's ascent to power and descent into internecine strife – regardless of whether his depiction of politics was realistic or not. But as it happens, oratory is one area of late Republican politics of which Livy is almost certain to have had a genuine understanding. It is true that 'Livy's direct knowledge of the realities of late-Republican political life in the city is suspect', as Morstein-Marx says, because so little is known about the historian's life, and more importantly because traditional Republican government collapsed when he was so

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<sup>368</sup> Woodman 2010: 306 cites Quint. *Inst.* 10.1.101 as evidence of a general expectation in antiquity that historians would 'insert into their works speeches of their own composition'.

<sup>369</sup> See Haimson Lushkov 2010 on Livy's composition of the *AUC* as an assertion of literary dominance over the work of the predecessors on which he drew. Cf. Pelling 2000: 21, on historiography in general: 'To narrate is to discriminate, to choose some events and actions as relevant and to eliminate others.'

young that he could never have experienced it anyway, at least not with a mature and comprehending mind. Yet Livy need not have had any direct experience of politics to be familiar with the part played by oratory in it, by virtue of his education. The details of Livy's schooling are as elusive as the rest of his personal history, but the speeches that so impressed rhetoricians such as Quintilian demonstrate a degree of technical skill and stylistic polish that bespeaks a formal education in rhetoric.<sup>370</sup> Technical texts such as the *Rhetorica ad Herennium* and Cicero's *De inuentione* give some idea of what a basic late Republican education in rhetoric entailed, while Cicero's philosophical treatments of oratory, the *De oratore*, the *Orator*, and the *Brutus*, show what was available to Romans with more advanced interests. All of these works use *exempla* from the history of Roman oratory to illustrate their points and substantiate their arguments. Some of these *exempla* are no doubt anecdotal, but others derive from published speeches. The texts referred to above hint at an extensive body of material available in Livy's Rome, of which all that remains as anything more than fragments are several works of Cicero. Like the Ciceronian corpus, however, the speeches available to Livy included political orations, delivered in the senate or at *contiones*, as well as forensic speeches that involved political matters. Judging from the frequency with which they are cited in handbooks such as the *Rhetorica ad Herennium* and the *De inuentione*, it seems that published speeches served as models for students of rhetoric. Cicero himself supports this inference in his *Brutus*, when his character recalls the *editae orationes* he read in his boyhood: the orations of C. Fimbria, a certain speech of C. Curio, 'considered the best of all by me when I was a boy', another of L. Crassus that was 'like a teacher' to him.<sup>371</sup> 'Cicero' also takes it for granted that published speeches are objects of study when he recommends that, of all Roman orators, C. Gracchus is fitting material to be read by the youth.<sup>372</sup> In all likelihood, it is from the written versions of orations that Livy would have learned to compose speeches, and in the process would have been exposed to the rhetoric that characterised Republican political oratory.

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<sup>370</sup> Walsh 1961: 2-4 speculates about Livy's education. For rhetoric in Roman education, see Bonner 1977: 65-75, 250-327.

<sup>371</sup> Fimbria: Cic. *Brut.* 129: *cuius orationes pueri legebamur* ('whose speeches we used to read as boys'); Curio: *Brut.* 122: *nobis quidem pueris haec omnium optima putabatur* ('this was considered the best of all by me when I was a boy'); Crassus: *Brut.* 164: *mihi quidem a pueritia quasi magistra fuit* ('For me indeed from my boyhood it was like a teacher'); see Treggiari 2015: 242.

<sup>372</sup> Cic. *Brut.* 126: *legendus, inquam, est hic orator, Brute, si quisquam alius, iuuentuti; non enim solum acuere, sed etiam alere ingenium potest* ('If anyone must be read by the youth, I say it is this orator, Brutus, who can not only sharpen but also nourish natural talent').

It must be admitted, however, that the published versions of speeches that were studied by pupils of rhetoric were not verbatim records of the speeches that were actually delivered. Cicero makes this point when he remarks of two extant speeches of Crassus that ‘more was said than was written down’ (*plura etiam dicta quam scripta*), as indicated by the summary treatment of certain sections of the speeches (*Brut.* 164). Even the more complete versions of Cicero’s own orations should be regarded as idealised versions of what he said, more stylistically polished and perhaps better organised than the addresses he actually delivered. But this does not mean that published speeches do not reflect, at least in outline, the substance of what they are intended to recreate; Cicero himself in the *Brutus* accepts *scriptae orationes* as evidence of what was actually said.<sup>373</sup> And, more importantly for the current argument, published speeches replicated the type of rhetoric, with its style, tropes, and underlying ideology, that characterised political oratory in the late Republic. There is good reason to be confident that this was the case, precisely because these texts were used as models for instruction. Indeed, it may well be that orators published their speeches with this in mind, that is, in the hope that their skills would not only be appreciated but emulated by succeeding generations.<sup>374</sup> Obviously, an orator’s style and technique, as they were represented in the published versions of his speeches, were only likely to be emulated if they proved useful to his emulators. So, as Morstein-Marx stresses, ‘The written version of a speech will therefore have been expected to reflect closely the actual circumstances of delivery, including the assumptions of the orator-author as to the distinct nature, disposition, and what we would call the ideological perspective of the kind of audience to which the original was delivered.’<sup>375</sup> As the opening paragraph of this section mentioned, the analyses of Morstein-Marx and others who accept this premise have identified a ubiquitous ideological outlook underlying late Republican rhetoric (although skilled orators could vary the emphasis they placed on particular aspects of this ideology depending on the audience they were addressing and the goals of their arguments). Given that Livy probably learnt to compose speeches in part by studying published texts, if the

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<sup>373</sup> E.g. *Brut.* 65, 68-9, 77, 82-3, 114-16, 117, 122, 131, 153, 163, 177; Morstein-Marx 2004: 25-7. Exceptions such as the second set of speeches *In Verrem* and the second *Philippica*, which were never delivered orally, and the *Pro Milone*, the presentation of which was interrupted, do not gainsay the general principal: Morstein-Marx 2004: 26.

<sup>374</sup> Stroh 1975: 21, 51-4; followed by Morstein-Marx 2004, 27-8.

<sup>375</sup> Morstein-Marx 2004: 28.

political oratory in his history is at all realistic it should evince aspects of this ideological consensus. And in fact certain speeches do indeed echo many of the commonplaces of late Republican political rhetoric, the most notable being the series of *contiones* attacking Fabius Maximus in Book 22. The incorporation of this rhetoric from the late Republic in a narrative of the events of 217 reinforces the impression that Livy's speeches are a product of his own time, of his contemporary political and cultural milieu. It also demonstrates that, regardless of the historian's practical experience or personal involvement, he did have some knowledge and understanding of this aspect of Roman politics. Because his education was based on written orations that were intended to be as authentic as possible, Livy need never have attended a *contio*, let alone a meeting of the senate, to be familiar with the kind of oratory used in these situations, and with the rhetoric that characterised that oratory.

The preceding analysis suggests that although the material that makes up the political speeches in the *AUC* is unlikely to be authentic, it was selected, edited, rewritten, and in some cases composed by an author who, by virtue of his education in rhetoric, probably did have an understanding of the character and historical rôle of oratory in public affairs. In the chapters that follow it will be shown that political oratory in Livy does have a significance beyond its generic narrative and dramatic rôles, and beyond the didactic functions of individual speeches. As two recent studies have shown, the *AUC* does in fact offer a systematic critique of the part played by oratory in politics. In her analysis of Livy's depiction of Syracusan affairs in Book 24, Mary Jaeger has shown that oratory both reflects and generates the political disorder that afflicts the city following the assassination of Hieronymus.<sup>376</sup> Jaeger argues that Livy's depiction of the persistent failure of oratory to quell the *discordia* afflicting Syracuse is designed to contrast with the more effective oratory (and, implicitly, the more ordered state of affairs) at Rome.<sup>377</sup> But while this may be true of Book 24, Livy does not always depict oratory as a force for good in Roman politics. Vasaly's study of the first pentad reveals that mass oratory has a varied character and impact in Livy's account of the early years of the *libera res publica*: eloquent demagogues use oratory to stir up *discordia*, while good leaders create harmony by

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<sup>376</sup> Jaeger 2003.

<sup>377</sup> Jaeger 2003, esp. 213-14, 217-19, 228-9.

using oratory assert their moral *auctoritas* and convey their wisdom to the Roman people.<sup>378</sup>

The next section and the chapters that follow will extend these analyses to the nature and rôle of oratory in Roman politics in Books 21–45. The section immediately below will review the part that speeches play in regular, everyday politics, in facilitating affairs of state and maintaining *concordia*. The next chapter will assess the negative impact of oratory by examining how it creates *discordia* or leads to the adoption of bad policies; it will also assess how politically dangerous oratory is countered and the proper order defended or re-established. The final chapter will also deal with oratory in a negative rôle, but what will be examined is an unusual case in which dangerous oratory is not effectively countered. This approach offers a broad overview of oratory's place in Livy's *res publica*.

### 2.3.2 Oratory in the absence of *discordia*

The *AUC* offers little insight into what could be called the day-to-day rôle of oratory at Rome for the simple reason that, as a literary device, speech is more useful as a way of conveying and exploring conflict than as a way of relating ordinary affairs. This is not to say that political speech is always dialogic in the *AUC*; it is simply to observe that most political speeches occur in the context of a dispute or conflict of some kind. Moreover, political speech usually plays a causal rôle in Livy's narrative of a given conflict, contributing for better or worse to the outcome of the episode.

This is not always true, of course. Livy recounts some *contiones* merely for explication or to advance a non-political narrative. The speech that Aemilius Paullus gives on the occasion of his *profectio* (44.22.1–16), for example, is not related to any immediate conflict. Its function is to give character to a figure who is to play an important part in this book and the next, as well as to reclaim Paullus from Polybius by inserting him into a line of wise and cautious Roman generals. Another oration that occurs in the political sphere but plays no real rôle in the narrative is the consul Sp. Postumius Albinus' speech at the *contio* at the end of the Bacchanalia Affair (39.15–16). Although this oration is a response to political danger, it does not actually participate in ending that danger; at the point at which the speech is delivered, the 'conspiracy' has already been exposed and the senate has made its decision and issued

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<sup>378</sup> Vasaly 2015: 77–95, 129–32.

a decree to deal with it (39.14). The speech is just an introduction to the *senatus consultum* that will be read aloud at 39.17. It plays no causal rôle in Livy's account of the Bacchanalia, but instead serves as an exhortation to defend Roman morals and traditional piety.<sup>379</sup> As such, it restores the moral order after its collapse in the account of the Bacchanalia, for the benefit of the speech's audience, both internal and external. But it plays no part in the politics of this (strangely apolitical) affair.<sup>380</sup>

Since the majority of political oratory either responds to or provokes political conflicts in the *AUC*, it will be discussed in the next two chapters, which treat the causes of *discordia* and the responses to it. While oratory is the focus of the last section in each of these chapters, the ubiquity of political speeches, its inseparability from public affairs in the *AUC*, will be apparent from the sections that precede them too, as indeed it should be already from 2.1 and 2.2 above.

## **Conclusion**

This chapter has shown that the *concordia* that prevails in Livy's account of public affairs in Books 21-45 is based on the willingness of the leaders of the Roman state to work together for the general good, in accordance with the *consensus* and *auctoritas* of the senate. The next chapter will show that these two pillars of good government play as important a rôle in suppressing *discordia* as they do in creating *concordia*.

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<sup>379</sup> See the outline of the speech in Walsh 1994: 123-4, which succinctly captures its main points and its overarching theme: the preservation of traditional morals and religion.

<sup>380</sup> Livy appears to have avoided politicising the Bacchanalia Affair by turning it into a conspiracy narrative along the lines of Sallust's *Bellum Catilinae*. This is not to say that it does not share features of other conspiracy narratives in Roman literature (see Pagán 2004: 50-67). But the political implications of the Bacchic *coniurationes* are largely submerged in the domestic drama of Aebutius and Hispala (39.9.2-14.3), which incorporates elements of New Comedy (see Scafuro 1989), and the greater part of Livy's account is dedicated to the resolution of the affair (39.14.3-19.7). Thus, despite the drastic response to the Bacchanalia, there is little sense of any real threat to the *res publica* in this episode.

## **Chapter 3**

# **Creating *discordia*, Maintaining *concordia***

### **Introduction**

This chapter follows the same outline as the last, with the first two sections discussing magistrates and leading citizens and the tribunes of the plebs, the third section political oratory. The theme of this chapter is twofold: the causes and consequences of political disorder and bad leadership in Books 21–45, and the way in which political disorder was opposed and suppressed. It will be demonstrated that in Books 21–45 the leadership of the *res publica* were generally able to keep the forces of *discordia* from disturbing the harmony of the state for too long.

### **3.1 Magistrates and leading citizens**

In the *Bellum Catilinae*, in his excursus on the vices that arose after the destruction of Carthage and the loss of the moral discipline imposed by *metus hostilis*, Sallust cites *ambitio* along with *avaritia* and subsequently *luxuria* as the chief causes of Roman *discordia*.<sup>381</sup> Livy too connects Rome's eventual moral and political decline with *avaritia luxuriae*; these vices, he writes in his *praefatio* (10–12), came unusually late to Rome, though their effect in recent times is all too evident.<sup>382</sup> *ambitio* is absent from Livy's explanation of Rome's recent troubles, and with good reason, for *ambitio* plays a part in his history of Roman politics from the very first book.<sup>383</sup> And while *avaritia* and *luxuria* also occasionally play a (negative) rôle in the *res publica* in Livy's extant books, an analysis of the causes of political strife in these books reveals that *ambitio* is far more often the key factor, particularly in political strife that revolves around holders of public office and other members of the office-holding class. It is not the only source of *discordia*, however, for the following analysis of the roots of *discordia* among the political élite reveals other significant factors. It also confirms

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<sup>381</sup> *ambitio*: Sall. *Cat.* 10.3, 5; 9.1–2. For a recent discussion on the theme of political and moral breakdown in Sallust, see Kapust 2011: 47–50.

<sup>382</sup> On the rôle of these vices in the moral and political scheme of Livy's history, see recently Kapust 2011: 91–2.

<sup>383</sup> On the advent and rôle of *ambitio* in Livy's account of the Regal period, see Vasaly 2015: 42–8. On the differences between Livy's and Sallust's views of the historical rôle of *ambitio*, see Ogilvie 1965: 23–4; Moles 2009: 76–7.



the implications of Livy's exclusion of *ambitio* from the vices that came to undermine the *res publica*, for in Books 21–45 the Romans generally prove capable of controlling and mitigating the effects of *ambitio* and other disruptive factors in politics. If, as seems likely, *ambitio* did play a part in the decay of the Roman polity that Livy went on to describe in the later half of his history, it was not as a novel factor which the Romans had no experience of confronting.

### 3.1.1 *Discordia* and *ambitio* in élite politics

Competition for *honores* – the term refers to both public offices and other sources of honour or acclaim – was inseparable from the Roman practice of politics, especially for the *nobilitas*, the highest echelon of the Roman élite. It is something of a paradox that the ardent desire for renown and high office should constitute a vice, but from the outset Livy leaves no doubt that *ambitio* is a moral failing not least because of its negative impact on the *res publica*. When Tarquinius Priscus secures the kingship by means distinctly redolent of later Roman politicians – ‘he is said to be the first man to have canvassed ambitiously for the kingship and to have had a speech composed for the purpose of winning the hearts of the plebs’<sup>384</sup> – Livy singles out the *ambitio* the man displayed seeking the kingship as a character flaw that stained his reign too.<sup>385</sup> In his *ambitio* to become king, Tarquinius is the first to resort to appealing to the masses to support his claims, instead of relying on the support of the *patres*. His *ambitio* thereby introduces a degree of *discordia* into Roman life, creating a division between the people and the senate.<sup>386</sup> He likewise creates a rift within the senate when he enrolls a hundred new senators, a ‘regal faction’ (1.35.6: *factio...regis*), to bolster his support in the Curia.<sup>387</sup> And eventually his *ambitio* results in civil violence, when the sons of Ancus Marcius, angry at Tarquinius’ ‘usurpation’ of the throne, arrange the king’s assassination (1.40).<sup>388</sup> Thus Livy links Tarquinius’ *ambitio* with the discord it sows.

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<sup>384</sup> 1.35.2: *isque primus et petisse ambitiose regnum et orationem dicitur habuisse ad conciliandos plebis animos compositam*; see Vasaly 2015: 44.

<sup>385</sup> 1.35.6: *uirum cetera egregium secuta, quam in petendo habuerat, etiam regnantem ambitio est* (‘The ambition that he had in seeking [the kingship] followed this in many ways excellent man as he was ruling, too’); Vasaly 2015: 44–45.

<sup>386</sup> Vasaly 2015: 44.

<sup>387</sup> Vasaly 2015: 44–5.

<sup>388</sup> Vasaly 2015: 45.

And *ambitio* remains a source of discord throughout Livy's history. In Books 21-45 it is never associated with violence, but it disrupts the government of Rome nevertheless. *ambitio* is predominantly associated with competition for *honores* among the political élite, and a few select examples suffice to illustrate its effects. Towards the end of the third decade of the *AUC* the credit for ending such a long and protracted war becomes the focus of élite *ambitio*, as consul after consul disturbs public affairs in pursuit of *gloria*.<sup>389</sup> The first consul afflicted with this *ambitio* is P. Cornelius Scipio, the man who will, in fact, bring about the end of the Hannibalic War and achieve everlasting glory for it. At 28.40.1-45.8, however, his desire to have Africa assigned to him as his province, so that he can bring the war to Carthage and thus have the opportunity to end the war, provokes *discordia* at the very heart of the Roman political establishment. Since, as Livy remarks, Scipio is 'now not satisfied with [only] moderate glory' (28.40.1: *nulla iam modica gloria contentus*), he determines to have Africa assigned to him by any means necessary, openly declaring that if the senate does not give him the province he will get the *populus* to give it to him instead, i.e. by means of a *plebiscitum* (28.40.1-2). The arrogance with which Scipio pursues his goal, and his stated intention to use the *populus* to bypass the senate – a move reminiscent of Tarquinius Priscus – should it not accede to his wishes, naturally provokes the *patres*' opposition. The *discordia* that follows (28.40.2-45.7) will be treated in closer detail in the next chapter of this thesis (4.1.1), but it should be obvious that in his pursuit of *gloria* Scipio has failed in his civil rôle. Instead of maintaining the *concordia* of the state in collusion with the senate, as a consul should, he himself disrupts the *concordia* of the state by undermining the senate's *auctoritas* and setting it in opposition to the *populus*. So extraordinary is this situation that it can only be resolved through the intercession of the tribunes of the plebs, who decree, over the consul's objections, that if he does ask the senate to issue a decree concerning the consular provinces he must abide by its decision (28.45.4-7). Scipio eventually agrees to the tribunes' terms, and in the event he is assigned Sicily but given permission to cross over to Africa if he sees fit (28.45.8).

Once in Africa, Scipio does not manage to bring the war to a quick end, so his command is prorogued in 204 (29.13.3) and again in 203 (30.1.10-11). On the second

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<sup>389</sup> For an historical overview of the contests over the African command, see Feig Vishnia 1996: 69-72.

occasion his *prouincia* is assigned to him ‘not for a set time, but for the sake of completing the task until the war was finished in Africa’ (30.1.10: *non temporis sed rei gerendae fine, donec debellatum in Africa foret*). When Scipio’s efforts start to bear fruit, however, others start to covet the *gloria* of bringing the war to a close. That *gloria*, by convention, would go to the man to whom the *prouincia* of Africa was assigned at the moment Carthage was defeated, regardless of the prior efforts of Scipio.<sup>390</sup>

A bad precedent is set by one of the consuls of 203, Cn. Servilius Caepio. Because Hannibal had finally left for Africa during his consulate, Caepio ‘was in no doubt that the *gloria* of bringing peace to Italy belonged to him’ (30.24.1: *haud dubius quin pacatae Italiae penes se gloria esset*) (despite having fought only a minor engagement with the Carthaginian), and so he crossed over to Sicily with the intention of following Hannibal to Africa. Caepio does not appear to have desired the African command *per se*; Livy implies that he simply considered it his right to go after Hannibal. Nevertheless, the consul’s pursuit of *gloria* makes him abandon his duties and leave his assigned province, Italy, without authorisation. The senate acts to restrain the wayward consul, first voting that the *praetor urbanus* should summon Caepio back to Italy with a letter, then, on the praetor’s advice, appointing a dictator to recall Caepio by virtue of his superior *imperium* (30.24.2-3).

Caepio’s *faux pas* is followed by deliberate attempts to ‘poach’ the glory of ending the war from the proconsul of Africa. The following year both consuls, Ti. Claudius Nero and M. Servilius Geminus, ‘desiring Africa’, *Africam ambo cupientes* (30.27.2), summon the senate in the hope that they might be allowed to cast lots for Africa and Italy. Thanks to the efforts of Q. Metellus, however, the senate manages to avoid having to decide the matter by advising the consuls to put the matter to the *populus*, asking the people whom it wanted to conduct the war in Africa (30.27.2-3). The *concilium plebis* votes unanimously for Scipio (30.27.4). But the matter does not end there, because the consuls cast lots for Africa all the same – with the senate’s authorisation, surprisingly, ‘for thus the senate had decreed’ (30.27.4: *ita enim senatus decreuerat*). Nero won Africa and was granted *imperium* equal to Scipio’s, but he was assigned a fleet to patrol the African coast rather than an army (30.27.5). Reading between Livy’s lines, what seems to be happening here is that the senate,

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<sup>390</sup> See Feig Vishnia 1996: 70.

eager to avoid a dispute and any *discordia* that might arise from it, found a way to satisfy the consuls' *ambitio* without undermining Scipio's command. First, the *patres* avoided any blame in the matter by leaving it to the *populus* to decide; then they permitted the consuls to cast lots for Africa without any intention of giving the winner an army to command, and knowing that they could fall back on the people's decision if challenged. Thus, the senate rather cleverly obviated the threat to *concordia* that the consuls' *ambitio* might otherwise have posed.<sup>391</sup> A subsequent *senatus consultum* confirms the senate's support for Scipio's right to end the war by alone determining the terms of the Carthaginians' surrender (30.38.7).

Even after Scipio's victory at Zama the temptation to rob him of the credit for ending the war does not subside. One of the next year's consuls, Cn. Cornelius Lentulus, 'burning with desire for the province of Africa' (*cupiditate flagrabat prouinciae Africae*), sets his heart on either an easy victory or, failing that, the *gloria* of having the war end under his consulate (30.40.7). This *ambitio* immediately disrupts public affairs as the consul forbids any other business being conducted until Africa was assigned to him (30.40.8). Inevitably, this leads to 'many struggles', *multae contentiones* (30.40.11). The tribunes Q. Minucius Thermus and M'. Acilius Glabrio challenge the consul, declaring the question of Scipio's command settled by the previous year's *plebiscitum*, brought *ex auctoritate patrum* and passed by unanimous vote of the *populus* (30.40.9-10). But the invocation of both *patrum auctoritas* and popular will are not enough to deter the ambitious consul, and eventually the matter is conceded to the senate to decide (30.40.11). As in the previous case, the senate's handling of the problem is sensitive and clever, designed to satisfy all parties. The consuls are to be allowed to cast lots for Italy and for a fleet; the commander of the fleet is to cross to the African coast *if* peace is not arranged forthwith; as in the case of Nero's command, the leader of the fleet is to have *imperium* equal to Scipio's but is to conduct naval operations only; and should terms be agreed upon, the *populus* is to decide which of the two men should formally make peace and which of them return with the recognition of having won the victory (30.40.12-14).

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<sup>391</sup> *Contra* Feig Vishnia 1996: 70, who interprets the senate's 'inconsistency' as a sign of its 'confusion'.

But even then the problem of *ambitio* does not subside. With peace imminent, the consul Lentulus, to whom the fleet had been assigned, forbids the senate to issue any decree in respect of the treaty (30.43.1). By this point, Livy has no need to explain the consul's motives. The two tribunes who challenged the consuls earlier bring the matter before the people all the same, asking them, in accordance with the *senatus consultum* of 30.40.12-14, whether the senate should issue a decree of peace, and whom they wished to make the peace and bring the army back from Africa (30.43.2). Naturally the people give all the *gloria* to Scipio.

Rachel Feig Vishnia argues that to attribute these disputes to 'personal ambition alone is to tell only one part of the story'.<sup>392</sup> This may perhaps be true from an historical perspective, but in the story that Livy tells *ambitio* is at the root of all.<sup>393</sup> Their desire for *gloria* makes Scipio, Caepio, and Lentulus fail in their consular responsibilities, with Caepio abandoning his province and the others attacking *senatus auctoritas* – the latter arguably the worse of the transgressions, since it fundamentally subverts the proper relationship between consul and senate. But in all cases the disruption to public business is brought to an end, more or less swiftly, and the proper political order is reasserted. The senate and the tribunes, often working together, outmanoeuvre the ambitious consuls, to the benefit of the *res publica*.

The desire for the acclaim of winning a great war causes trouble elsewhere in Books 21-45, too. Livy associates C. Terentius Varro's tumultuous bid for the consulate with a desire for a victory over Hannibal, since he depicts Varro as one of the 'brash commanders' of Books 21-2. Livy does not attribute this desire to Varro until after his election as consul, when in 'many insolent public speeches', *contiones multae ac feroces*, he vows to 'end the war the day he catches sight of the enemy' (22.38.6-7: *bellum...se quo die hostem uidisset perfecturum*). But during the election campaigns Varro's cousin, the tribune Q. Baebius Herennius, stresses his kinsman's prospects of winning the war while insinuating that the *nobiles'* opposition to the *nouus homo* Varro is part of a conspiracy to prolong it (22.34.2-11). The *discordia* that Herennius' speeches provoke between the *populus* and the *patres* is so severe that the *populus* not only elects the eminently unsuitable Varro to the consulate, but initially refuses to elect a colleague for him from among the patricians (22.35.1-2).

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<sup>392</sup> Feig Vishnia 1996: 72.

<sup>393</sup> *Contra* Feig Vishnia 1996: 72, there is also little evidence in Book 30 of continued opposition to Scipio's command within the senate.

Varro's desire for the credit of conquering Hannibal leads him directly to his defeat at Cannae, and thus leads Rome to the brink of defeat in the war. This case of *ambitio* is part of an extended sequence of political upheavals in which the leaders of the state collectively fail to control the forces of discord, and such failures are rare in Books 21-45.<sup>394</sup> More often the senate and tribunes are successful in limiting the damage caused by the political élite's hunger for martial *gloria*. The Macedonian command in the second war with Philip V provokes *ambitio* in some consuls in much the same way the African command does at the end of the Hannibalic War, and with similar results too. First C. Cornelius Cethegus and Q. Minucius Rufus, the consuls of 197, want Macedonia included among the provinces to be allotted to them (32.28.3). The tribunes L. Oppius and Q. Fulvius object on the grounds that continually changing commanders would retard the progress of the war (32.28.3-7). The tribunes manage to convince the consuls to put the matter in the hands of the senate, and the senate signals its agreement with the tribunes by assigning both consuls to Italy and proroguing the command of T. Quinctius Flamininus, who had led the campaign in the previous year (32.28.8-9). The consuls of the following year (196), L. Furius and M. Claudius Marcellus Purpurio, attempt the same thing as their predecessors when it becomes apparent that the senate intends once again to assign Italy to both of them (33.25.4). Marcellus, 'especially eager for the province' (*prouinciae cupidior*) of Macedonia argues that the peace that Flamininus has achieved is illusory, and his argument sows doubt among the *patres* (33.25.5). This time, however, it is the tribunes who come to the aid of the senate, when Q. Marcius Ralla and C. Atinius Labeo announce that they would veto any motion before the question of peace was referred to the people – who duly vote for peace to be made formally (33.25.6-7). In these two episodes, first the senate and tribunes together and then the tribunes alone prevent consular *ambitio* from needlessly and selfishly prolonging the war.

Other wars might not offer the chance for the kind of immortal renown won by Scipio Africanus and T. Flamininus, but the possibility of adding a triumph to one's *res gestae* is a regular spur to ambition in Livy. Inevitably, the contests over the right to a triumph in which this ambition often results become a locus of *discordia*,

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<sup>394</sup> This sequence of political episodes in Book 22, and the rôle of oratory in it, is the subject of Chapter 4.2 below.

particularly in the fourth and what remains of the fifth decade.<sup>395</sup> At 31.48 a dispute arises within the senate over the validity of the praetor L. Furius Purpureo's request for a triumph in recognition of his victory over the Gauls. The praetor had fought the engagement with an army that was technically under the command of the consul C. Aurelius Cotta, which the senate had authorised the consul to send to reinforce Furius after a sudden attack.<sup>396</sup> In recognition of the victory, the senate had approved a three-day *supplicatio* (31.22.1), but Cotta was resentful of the lost opportunity for ending the Gallic uprising, and upon resuming command of his army sent Furius away to Etruria (31.47.4-5).<sup>397</sup> The praetor, 'eager for a triumph', *triumpho imminens*, took advantage of the consul's absence to return to Rome to press his case (31.47.6-7).<sup>398</sup> The praetor's request creates a division in the senate, some recognising the 'greatness of his achievements' (*magnitudine rerum gestarum*) and looking favourably on his claim (31.48.1), other, older senators rejecting it because he had fought the battle with another man's army and because in his *ambitio*, his lust for a triumph, he had abandoned his province (31.48.2: *quod prouinciam reliquisset cupiditate rapiendi per occasionem triumphī*); the consulars, too, favour rejecting the request because, they argue, the praetor ought to have waited for the consul (31.48.3-5). In the end, a 'large part of the senate', *magna pars senatus*, stressing the praetor's achievements and the exigencies of war, persuades the other part to concede a triumph to Furius (31.48.6-49.1).<sup>399</sup> This matter is resolved more easily than most of the disputes arising from *ambitio* discussed above: the senators settle it among themselves, as they should, without recourse to the tribunes or to clever compromises. The senate's vote is decisive, preventing the discord sown by the consul and the praetor from going beyond the walls of the Curia. It also preserves *senatus auctoritas*, since the senate

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<sup>395</sup> On this topic, see Pittenger 2008: 168-274 and *passim*; and 149-67 on the all too rare triumphs during the Second Punic War.

<sup>396</sup> The background to this episode is given at 31.10.1-11.3; the battle: 31.21; see Pittenger 2008: 168-70.

<sup>397</sup> Though the real cause of Cotta's resentment is not described, it is implied by his 'anger at the praetor for having dealt with the matter when he [the consul] was away' (31.47.4: *iram aduersus praetorem quod absente se rem gessisset*), and by the description of him as 'angry and envious' *iratus atque inuidens* (31.47.6); for interpretation see Pittenger 2008: 170-1.

<sup>398</sup> Pittenger 2008: 171 interprets Furius' decision to press his claim to a triumph after his dismissal to Etruria as recognition of (a) the lack of opportunity for further noteworthy accomplishments in Etruria, and (b) the possibility that Cotta, now in his province with an army at his disposal, would monopolise any further *gloria* to be had in the war, hence overshadowing his own achievement.

<sup>399</sup> See Pittenger 2008: 171-6 for an analysis of the debate and the interplay of the various sides' competing strategies.

had after all given Cotta permission to dispatch his soldiers to Furius as reinforcements; it would be inconsistent, not to say self-defeating, for the senate to admit that this had been a mistake (31.48.8-9).<sup>400</sup>

But the *ambitio* of the leading men in the state need not be directed at the greater glories of war to be disruptive and damaging to public interests. Regular offices, comparatively mundane *honores* when set against the *gloria* of ending the Hannibalic or Macedonian Wars or even of a triumph, were still more than sufficiently desirable to stimulate fierce competition. This competition was of course a normal part of the life of the political élite, particularly among the *nobiles* of the greater families who saw the highest offices as their birthright. On occasion, however, candidates could get carried away by their *ambitio*, with dire consequences for the *res publica*. There are several such cases in Books 21-45. C. Varro in Book 22 was mentioned above in connection with the consequences of his desire for the renown of defeating Hannibal. But Livy attributes a range of offences to this *nouus homo* that proceeded from his desire to rise above the humble station in which he was born.<sup>401</sup> He has made a career of attacking and denigrating good citizens, and his most recent victim is the dictator Q. Fabius Maximus Verrucosus.<sup>402</sup> By advocating the bill proposed by M. Metilius to grant the dictator's *magister equitum* equal *imperium*, he attracts sufficient popular enthusiasm by stirring up hatred of the dictator (22.26.4: *fauoris popularis ex dictatoriali inuidia*) to sustain his bid for the consulate.<sup>403</sup> Following in the footsteps of Tarquinius Priscus, Varro realises his ambition of rising to social and political prominence 'by railing against the leading men and by the demagogic arts' (22.34.2: *insectatione principum popularibusque artibus*), profiting from the *discordia* he has sown between *patres* and *populus*.

Varro's *ambitio* is in large part responsible for the worst *discordia* between the orders in the AUC outside of the first decade. Never again in the extant books does the pursuit of *honores* disturb the harmony of the orders to this extent, but it does occasionally generate discord within the political class. The censorial elections in 189,

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<sup>400</sup> Pittenger 2008: 175-6.

<sup>401</sup> Varro was reputedly the son of a butcher (22.25.18-19), but resolved to live a life more suited to a freeman upon receiving his inheritance: 22.26.1.

<sup>402</sup> Varro's disreputable career: *proclamando pro sordidis hominibus causisque aduersus rem et famam bonorum primum in notitiam populi, deinde ad honores peruenit* (22.26.2: 'by clamouring on behalf of squalid fellows and causes against the property and reputation of good citizens he came first to the notice of the people, and from there to public offices'). On the rôle of demagoguery in Varro's rise to power, see the discussion at Chapter 4.2.2.

<sup>403</sup> 22.25.18; 22.26.3-4; 22.34.2.



for example, are hotly contested because of the ‘many eminent men’, *multi et clari uiri* (37.57.9), who were candidates that year. The competition was all the more intense because of the candidates’ parity in terms of merit (37.57.9). M’. Acilius Glabrio, the victor of Thermopylae and conqueror of the Aetolians, enjoys special *fauor populi*, however, thanks to his generous *congruaria*, ‘by which he bound a great proportion of the men to himself in obligation’ (37.57.11: *quibus magnam partem hominum obligarat*). The advantage Glabrio enjoys provokes resentment, not least among the *nobiles* who saw ‘a new man being so much preferred to themselves’ (*nouum sibi hominem tantum praeferri*); two tribunes of the plebs, P. Sempronius Gracchus and C. Sempronius Rutilus – apparently eager to curry favour with the *nobiles* (see Chapter 2.2.2 above) – take it upon themselves to bring a charge of peculation against him (37.57.12). One of the candidates, M. Cato, testifies against Glabrio (37.57.13-14), and Livy comments that the former’s ‘white toga [i.e. candidacy] detracted from the *auctoritas* that he had cultivated strenuously all his life’ (*cuius auctoritatem perpetuo tenore uitae partem toga candida eleuabat*). Finally, Glabrio withdraws his candidacy, and in a parting shot intended to arouse *inuidia* against Cato he accused him of behaving worse than the *nobiles* by perjuring himself against a fellow *nouus homo* (37.57.15). Their rivalry for the censorship brings shame on all the participants in this *contentio*. Another fiercely contested election, for the patrician consulate of 184, sees a consul, App. Claudius Pulcher, bring himself into disrepute by canvassing on behalf for his brother (39.32.5-9). This provokes an outcry against his improper conduct from the other contenders and the greater part of the senators (39.32.10-11), and generating such ‘great disputes’, *magnae contentiones*, among the tribunes that ‘the assembly was thrown into confusion several times’ (39.32.12: *comitia aliquotiens turbata*). In the previous example there is no mention of any attempt to ameliorate the *discordia* created by the intensity of the competition, presumably because nothing overtly illegal or untraditional took place. Here, however, Livy highlights the opposition of the majority of the senators to App. Claudius’ impropriety, but neither the senate nor the tribunes prove capable of bringing the consul to heel. The consul’s brother is elected contrary to even his own expectations; the historian makes his own view of this affair perfectly clear by labelling it a case of *uis Claudiana* (39.32.13). The *patres* are rather more successful in dealing with the irregular candidacy of Q. Fulvius Flaccus, an aedile-elect, for the office of praetor when the incumbent dies unexpectedly (39.39). Here again the *ambitio* of an

aspirant to magistracy causes great *contentio*, and in his stubbornness he refuses to concede to the *auctoritas* of either the consul L. Porcius or of the senate (39.39.8-10). An ‘enormous struggle’, *ingens certamen*, among the tribunes resolves nothing, merely stalling the election, but in the meantime the *patres* arrive at the ingenious solution of simply decreeing that there are enough praetors already (39.39.13-14).

From the ubiquity of *ambitio* in the *AUC*, it is clear that to Livy’s mind that *ambitio* was an inevitable part of political life at Rome. Much of the internal strife in Books 21-45 stems from the *ambitio* exhibited by many of the leading men of the state. But there are other causes of political disorder.

### 3.1.2 *Discordia* and *inimicitiae* in élite politics

Rivalry was as much a part of the public life of the élite as the desire for *honores*, but sometimes – indeed, often – personal rivalries developed into genuine enmity.<sup>404</sup> David Epstein, in his fundamental study of personal enmity in the Republic, highlights the ambivalence that élite Romans displayed towards *inimicitiae* as a consequence of their political culture.<sup>405</sup> On the one hand,

‘Because their national interests could be threatened when individuals pursued mutual hostility without regard for higher concerns, they found such pursuits irreconcilable with the ideal Roman polity. At the same time, most [élite] Romans aspired to the dignity of consular status, which could only be obtained through ruthless competition and the elimination of one’s peers. Such ambition inevitably generated *inimicitiae*.’<sup>406</sup>

Livy’s history of Rome attests the general accuracy of this analysis. In Books 21-45, *inimicitiae* are associated with the contests between individual members of the political élite over the highest *honores*: the *AUC* takes for granted that *inimicitiae* are an attendant phenomenon of Roman politics. Yet these *inimicitiae* disrupt Roman politics, and as such they have to be controlled by the broader political leadership.

The *inimicitiae* that came to the fore in the censorship of M. Livius Salinator and C. Claudius Nero had their origins in the trial and exile of the former many years

<sup>404</sup> On the causes of enmity in the Republic, see Epstein 1987: 30-63.

<sup>405</sup> Epstein 1987: 12-29. The term *inimicitiae* properly refers to discrete ‘demonstrations of hostility, whether by action or declaration’ rather than to enmity as a phenomenon, hence it usually occurs in the plural: Epstein 1987: 3; cf. Hellegouarc’h 1963: 186-7. For a discussion of the term see Epstein 1987: 1-3. For the sake of simplicity, this thesis uses *inimicitiae* to refer to the phenomenon as well as to its individual manifestations.

<sup>406</sup> Epstein 1987: 12.

before (27.34.3-8). Ironically they had been elected co-consuls in 208, but had been convinced by *senatus auctoritas* to set aside their enmity in order to conduct their duties properly (27.35.5-9). When they again shared a magistracy, this time the censorship, their *inimicitiae* resumed. At 29.37.8-16 the two engage in a ridiculous display of resentment: first they strip one another of their *equi publici*, then Nero demotes Salinator to the *aerarii*, then Salinator demotes the entire Roman people to the *aerarii*. In addition to the obvious disruption to public affairs, the censors bring shame upon themselves (29.37.11), and almost bring the censorship itself into disrepute (when an opportunistic tribune attempts to try both men while they are still in office: 29.37.17).

Another famous rivalry has already been mentioned, in the previous chapter's analysis of Ti. Sempronius Gracchus' confrontation with his fellow tribune M. Aburius. The debate at 39.4.1-5.7 is only the latest effort in M. Aemilius Lepidus' ongoing campaign to deny his *inimicus* M. Fulvius Nobilior a triumph. This is itself merely one manifestation of the two men's hostility.<sup>407</sup> Livy explains the source of this hostility by way of an introduction to Lepidus' efforts to ruin his *inimicus'* chances of being rewarded for his successful campaign in Aetolia.

*inimicitiae inter M. Fulvium et M. Aemilium consulem erant, et super cetera Aemilius serius biennio se consulem factum M. Fulvii opera ducebat. itaque ad invidiam ei faciendam legatos Ambracienses in senatum subornatos criminibus introduxit (38.43.1-2)[.]*

There was enmity between M. Fulvius and M. Aemilius the consul, and on top of everything else Aemilius believed that the efforts of M. Fulvius had made him consul two years too late. And so to bring hatred upon the latter he brought into the senate Ambraciot ambassadors who had been coached in accusations.

Livy's reference to the origins of the *inimicitiae* prompts the reader to recall the two previous consular elections.<sup>408</sup> The precise reason that Lepidus blames Nobilior for his first defeat is not clear, except insofar as Nobilior is elected ahead of him (and everyone else: there had to be a runoff election because none of the other candidates

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<sup>407</sup> Pittenger 2008: 196-204 provides a penetrating analysis of Livy's depiction of Lepidus' and Nobilior's *inimicitiae*.

<sup>408</sup> Pittenger 2008: 197.

received the requisite number of votes in the first round: 37.47.6-7).<sup>409</sup> What is clear, however, is Lepidus' *ambitio*, which made him leave his province to canvass without the senate's permission (37.47.6). As Miriam Pittenger recognises, this 'constituted a political faux pas...because it signaled [*sic*] that he put his ambition before duty'.<sup>410</sup> The disrepute this brought Lepidus is a much more obvious reason for his defeat than anything Nobilior did. On the occasion of Lepidus' second defeat the reasons for his hatred of Nobilior are more clear (although the latter's rôle still is not), for Livy states simply that as presiding consul Nobilior saw to his *inimicus*' defeat (38.35.1: *M. Aemilium Lepidum inimicum eo quoque anno petentem deiecisset*). So once again *ambitio* and wounded *dignitas* are responsible for *inimicitiae* that come to disrupt public affairs.<sup>411</sup>

Nobilior appears to have abused his position to keep Lepidus from a consulate on the second occasion.<sup>412</sup> When Lepidus does finally win the consulate, he repays his *inimicus* in kind, continuing the cycle of magisterial misconduct that proceeds from their enmity. First, in order to bring *invidia* on his enemy, he introduces the Ambraciot emissaries to denounce the sack of their city by the Nobilior as cruel and excessive (38.43.1-6). The other consul, C. Flaminius, sees through this however, rebukes his colleague for bringing his *inimicitiae* into the senate, and vows to block any decree respecting the Ambraciots or Aetolians in Nobilior's absence (38.43.7-13). Undeterred and unabashed, Lepidus simply waits until Flaminius is absent one day, and passes a motion through the senate effectively reversing Nobilior's conquest of Ambracia (38.44.2-5).<sup>413</sup> Thus the consul unites abuse of his power in the domestic sphere with interference with Roman interests abroad. And his campaign to discredit his *inimicus* and prevent him from enjoying the *gloria* of his conquests continues with his attempt to block a senatorial vote regarding a triumph for Nobilior, by proxy as it happens, since he is away. This attempt fails thanks largely to Ti. Gracchus, as discussed in Chapter 2.2.4.

There is a coda to these *inimicitiae* in Book 40, however. When the enemies happen to be elected censors together, the leading senators, accompanied by a throng

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<sup>409</sup> See Pittenger 2008: 197-8, who suggests that Lepidus' resentment against Nobilior specifically relate to the fact that Nobilior seems to have presided over the second round of voting at which Lepidus was again defeated.

<sup>410</sup> Pittenger 2008: 198.

<sup>411</sup> Epstein 1987: 59.

<sup>412</sup> Epstein 1987: 73.

<sup>413</sup> See Pittenger 2008: 203-4 on Lepidus' manoeuvring.

of citizens, approaches the censors, and Q. Caecilius Metellus pleads with them to set aside their enmity so that they can perform their duties properly (40.45.6-46.13). The censors agree to concede to the power of so many leading citizens (40.46.14: *se in potestate tot principum ciuitatis futuros*), and formally end their feud to universal applause (40.46.15). The senate praises both the *principes* for their concern for the state and the censors for their willingness to yield (40.46.15). This, then, is an encouraging end to an otherwise troubling rivalry, in which *principes* and ordinary citizens come together to plead for the good of the *res publica*, and two bitter enemies finally set aside their personal interests for those of the public.<sup>414</sup> As *inimici*, Nobilior and Lepidus end their careers on a more positive note than Salinator and Nero.

### 3.1.3 C. Flaminius against élite politics

Shameful and disruptive as they are, they *inimicitiae* of these magistrates at least have an intelligible cause. There is one holder of high office in Books 21-45, however, who disrupts politics and even endangers the state out of nothing more than spite towards the rest of the ruling élite: C. Flaminius. Livy may have detailed the reasons for this rancour in earlier books, as he no doubt recounted the previous confrontations, *uetera certamina*, with the *patres* that he mentions at 21.63.2, dating them to Flaminius' tribunate, his first consulship, and his bid for a triumph. As it is, however, Flaminius comes across only as a deeply irresponsible man, with no regard for *concordia*.

Flaminius combines his enmity towards the *patres* with *ambitio* in an earlier event that Livy mentions. Flaminius, he writes, earned himself the *inuidia* of the senators by supporting Q. Claudius' bill limiting the capacity of senators' ships (21.63.3-4). This was demagogic opportunism on Flaminius' part, for, although it won him the *inuidia* of the *nobilitas*, it also won him the *fauor* of the plebs that elevated him to a second consulship (21.63.4). But with cause to fear that his enemies might try to stall his assumption of office, Flaminius leaves Rome without taking the auspices (21.63.5). This dereliction of his religious duty causes the *patres* to remark that

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<sup>414</sup> Pittenger 2008: 210-11 argues that this episode demonstrates the particular importance to the Romans of *concordia* between the censors, because of their moral exemplarity as well as the essential tasks they performed. Hence e.g. Livy's stress on the harmony between Scipio Africanus and P. Aelius Paetus in the censorship (32.7.3: *magna inter se concordia*); cf. the *concordia* between Ti. Sempronius Gracchus and C. Claudius Pulcher, demonstrated above all by Gracchus' readiness to accompany his colleague into exile (43.16.15). Even when the two differ, as they do over the enrolment of freedmen in the rural tribes, they find a way to resolve their difference without *discordia*, and earn the senate's praise for it (45.15.1-9).

Flaminius is ‘waging war not just with the senate, but now with the immortal gods’ (21.63.6: *non cum senatu modo, sed iam cum dis immortalibus C. Flaminium bellum gerere*). And when summoned by the senate to return to Rome to perform the proper rites, Flaminius simply ignores the summons (21.63.11-12).

Thus Flaminius manifests all the worst traits associated with bad members of the political class: *ambitio* without moral limits, the demagogue’s willingness to aggravate *discordia* between *patres* and *populus* in the pursuit of his goals, and a disregard for *senatus auctoritas* and even for the gods. The ultimate result of Flaminius’ impiety is his death and the destruction of his army at Lake Trasumennus, and so his misconduct damages not only the internal affairs of the state, but brings Rome into existential danger.

What all of the trouble-makers discussed above share is a willingness to prioritise their self-interest, be it *ambitio*, *inimicitiae*, or a combination thereof. Books 21-45 paint a clear picture of the dangers that unbridled self-interest among the leading men poses to civil harmony and good governance. But as this section also shows, the senate, magistrates, and tribunes, working individually or in concert, are usually able to limit or mitigate the worst effects of selfish conduct – usually, but worryingly not always.

### **3.2 Tribunes of the plebs**

The previous chapter showed that, by the beginning of the third decade of the *AUC*, the tribunate had evolved from its origins as an instrument of plebeian resistance to patrician rule into an integral component of the Roman state, with the tribunes for the most part acting as useful and willing partners in senatorial rule. Yet there is no shortage of political discord or bad policy resulting from tribunician activity in Books 21-45.

The capacity of the plebeian tribunate to cause political upheaval has no parallel among the junior magistracies of any other ancient polity. The extent of its powers, the range of its competence, and the fact that it was not answerable to any other office or institution made the tribunate as powerful within the ritual boundary of Rome as the technically superior praetorship and consulate. Yet in spite of abundant evidence of the tribunate’s potential to disrupt the stability of the state, there was no serious attempt to curtail the power of the tribunes until L. Sulla’s *dominatio*,

and even Sulla's measures were reversed within a decade of his death. Roman conservatism seems to have ensured that tribunate and its powers were preserved as they were, despite the obvious problems they posed to the governance of the state. This conservative attitude is well-illustrated by the discussion in Cicero's *De legibus* (3.19-26), and as the previous chapter illustrated Livy appears to have shared this view of the tribunate as a problematic but indispensable part of the *libera res publica*.

Since there was little will to alter the traditional powers of the tribunate – even Cicero could offer no convincing solution to the contradictions of the office<sup>415</sup> – the Romans had to respond to each challenge that resulted from the tribunes' activities as it arose. Livy's history reflects this *ad hoc* approach to tribunician disruptions: it gives no sense of any unified approach to or governing principle for dealing with the troubles caused by tribunes. Certain patterns can nevertheless be gleaned from Livy's depiction of tribunician controversies in Books 21-45 that explain how the *discordia* generated by these controversies was, for the most part, contained and ameliorated. This section analyses the causes and nature of the political conflicts aroused by tribunes of the plebs, and the ways in which these conflicts are resolved.

### 3.2.1 The causes of tribunician troubles

The problems caused by Livy's tribunes are as diverse as their powers are broad: they promulgate pernicious laws, use their veto to block the resolutions of the senate, defame leading citizens at *contiones* and sometimes even prosecute them. In general, it is not the tribunes' use of these prerogatives *per se* that renders their actions harmful to the *res publica*, since, as the previous chapter showed, other tribunes deploy the same powers to the polity's benefit. Rather, in the majority of cases it is the purposes for which certain tribunes use their powers that provokes conflict or threatens Roman interests. And while the specific aims of the trouble-makers vary according to circumstance, they are typically alike in being motivated by personal interest.

As with the magistrates discussed in the previous section, the motives of the turbulent or troublesome tribunes in the *AUC* are often quite transparent, and as with their magisterial counterparts they are usually motivated by *ambitio* or by personal relationships, *amicitia* and *inimicitia*. Not that Livy is always explicit about a

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<sup>415</sup> Although Marcus has the last word in the debate over the tribunate in *Leg.* 3.19-26, he fails to convince his interlocutors of the constitutional necessity of the tribunes: the discussion ends in ἀπορία, leaving the problem of the tribunate unresolved: Dyck 2004: 516.

tribune's aims or purposes. The historian often refers directly to the influence of kinship/friendship and enmity, but is more understated about the rôle of *ambitio* in a character's actions. Sometimes he leaves it to his audience to infer a tribune's motives from his description of the circumstances, but it is often obvious that a desire for renown or political advancement is behind the man's actions. For example, he relates Cn. Baebius' attempt to bring M. Livius Salinator and C. Claudius Nero to trial without comment, but he does describe it as arising out of the unpopularity of the famously antagonistic pair:

in invidia censores cum essent, crescendi ex iis ratus esse occasionem  
Cn. Baebius tribunus plebis diem ad populum utrique dixit (29.37.17).

Since the censors were unpopular, Cn. Baebius, tribune of plebs, considering it an opportunity to become great at their expense, set a date for each of them to come before the people.

Baebius comes across as an opportunist, and the source of his opportunism would have been apparent to a Roman audience familiar with the long history of tribunes who prosecuted high-profile figures in an effort to increase their own standing and renown. The senate draws the same conclusion from the Petillii's prosecution of Scipio Africanus. Livy does not offer any explanation in his narrative voice for the tribunes' attack on Scipio or his brother, although he makes it clear that others, such as Cato, supported the prosecutions because of their enmity towards the great man. At 38.53.7, however, the senate denounces the Petillii because, in the *patres'* assessment, 'they wanted to be illustrious through another person's unpopularity and were after the spoils of a triumph over Africanus' (*splendere aliena invidia uoluissent et spolia ex Africani triumpho peterent*), much as Baebius had wanted to exploit the unpopularity of Salinator and Nero. The consensus of the senate, as so often, is offered to the reader as a guide to interpreting the situation, and nothing else in the account of the 'trials' suggests that the Petillii are motivated by anything other than opportunistic ambition. The same motive is evident in the account of the prosecution of M.' Acilius Glabrio, which is attributed directly to the ire the latter's candidacy aroused among the *nobiles*:

id cum aegre paterentur tot nobiles, nouum sibi hominem tantum  
praeferri, P. Sempronius Gracchus et C. Sempronius Rutilus, <tribuni  
plebis,> ei diem dixerunt... (37.57.12)



Since so many *nobiles* took offence that a new man should be so far preferred to themselves, P. Sempronius Gracchus and C. Sempronius Rutilus, tribunes of the plebs, set a trial date for him...

The *cum* clause suggests a causal relationship between the *nobiles*' irritation and the Sempronii's suit, just as the *cum* clause at 29.37.17 connects Baebius' attempt to try the censors causally to their unpopularity. Thus, without referring directly to the tribunes' motives, Livy presents the Sempronii as exploiting Glabrio's unpopularity with an influential segment of society, strongly implying they want to gain favour with the *nobiles*. In each of the cases discussed here, Livy presents the tribunes as being driven by a desire for self-aggrandisement at the expense of prominent men, rather than by any genuine desire for justice; moreover, the Scipiones are presented as blameless, and Glabrio's guilt is not certain either. M. Postumius Pyrgensis, the *publicanus* who had been sinking his own ships to claim insurance from the state, is at least guilty of the charge for which the tribunes Sp. and L. Carvilius propose to fine him.<sup>416</sup> The tribunes' prosecution, however, is presented as response to the fraud's unpopularity (again, with a causal *cum* clause):

populus seuerior uindex fraudis erat, excitatique tandem duo tribuni plebis, Sp. et L. Caruilli, cum rem inuisam infamemque cernerent, ducentum milium aeris multam M. Postumio dixerunt (25.3.13).

The people were a harder avenger of deceit, and at length there were aroused two tribunes of the plebs, Sp. and L. Carvilius: since they discerned that the matter was unpopular and notorious, they announced a fine of two hundred thousand gold pieces for M. Postumius.

Thus, although the guilt of the tribunes' target is not in doubt, the Carvili nevertheless appear to be motivated by the chance to win popular favour rather than by a desire to see justice done. The Carvili are no less opportunistic and ambitious than the Sempronii and Baebius.

Whereas the historian tends to let his readers infer the impact of *ambitio* on his tribunes' disruptive behaviour, he frequently draws their attention to the private relationships that influence tribunes' actions for the worse. Livy presents some tribunes as using, or rather abusing, their office to attack their *inimici*. He introduces C. Publicius Bibulus, who uses his *contiones* to heap infamy and hatred on M. Claudius Marcellus and proposes a bill to abrogate the latter's command, as *inimicus*

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<sup>416</sup> Livy presents Postumius' crimes as a matter of fact at 25.3.8-11.

*ei* (27.20.11), apparently satisfied that the label alone is sufficient to explain the tribune's actions. P. Rutilius' decision to aid the *publicani* against the censors Ti. Sempronius Gracchus and C. Claudius Pulcher is described as arising 'out of a private matter, [Rutilius] having been enraged by a dispute with the censors' (43.16.3: *ex rei priuatae contentione iratum censoribus*), but here at least Livy offers a brief account of the circumstances that made the tribune into the censors' enemy. Another tribune with a grudge against these censors, Cn. Tremellius, vetoes their request for their term of office to be extended 'because he was not enrolled in the senate [by them]' (45.15.9: *quia lectus non erat in senatum*). Rutilius and Tremellius have an earlier parallel in the tribune M. Metellus, who tries to bring the censors P. Furius and M. Atilius to trial before the people. Livy makes no mention of the charges, but focuses instead on the source of tribune's grievance against the censors, who had stripped Metellus of his *equus publicus* and reduced him to the *aerarii* for supposedly conspiring to abandon Rome in the wake of the Battle of Cannae (24.43.2-3). The account of this affair gives the irresistible impression that private enmity, not public interest, is the reason for Metellus' prosecution.

And the *AUC* shows that friendship and family connections, as well as enmity, can motivate tribunes to misuse their powers. Q. Baebius Herennius, who plays the demagogue and stirs up popular anger against the senate and augurs in his *contiones*, is a relative of C. Terentius Varro and hopes to promote his relation's candidacy through the *inuidia* he is arousing against his *nobilis* opponents (22.34.3-4). Another tribune of the plebs, described as a relative of L. Scribonius, who was among the envoys sent by Hannibal to negotiate the release of the Roman survivors of Cannae, proposed that the ransom be paid but was voted down in the senate, at least according to one tradition Livy knew (22.61.7). The tribune's proposal is not directly attributed to the bonds of kinship, but the pointed mention of a family connection makes the inference difficult to resist. Livy's account of this alternative tradition implies that the tribune, like the matrons clamouring for the release of their sons and husbands outside the senate, has allowed personal feelings to overwhelm his judgement of what was best for Rome at this moment of crisis. That family connections, no less than personal antipathy, could exert a negative influence on a tribune is presented as a matter of fact, something that can be taken for granted. Livy's treatment of C. Servilius Casca, a 'blood-relative', *propinquus cognatusque* (25.3.15), of the fraudulent *publicanus* M. Postumius Pyrgensis, is illuminating. With the *populus* so hostile towards them,

Casca's veto is described as the contractors' sole hope, and Livy offers no further explanation of this hope than the tribune's kinship with Postumius (25.3.15). Indeed, it is Casca's reluctance to intercede on his relative's behalf (for shame and fear of the people's anger), rather than the possibility that he might do so despite their obvious guilt, that Livy felt the need to explain (25.3.17).

In view of the proclivity of tribunes to let their ambitions and personal relationships dictate their conduct in office, Ti. Sempronius Gracchus' principled refusal to do so is part of what makes him so noteworthy. As the previous chapter showed, Livy stresses Gracchus' readiness to set aside his *inimicitiae* with Scipio Africanus in the interest of performing his tribunician duties – a lesson that he makes Gracchus himself reiterate when he admonishes M. Aburius for using his tribunate to participate in other men's quarrels (39.5.5).<sup>417</sup> Gracchus therefore stands as a counter-*exemplum* to the self-interested tribunes who quite often disturb the *res publica* in Books 21-45. His behaviour is also, significantly, far from typical: indeed, upon introducing him Livy remarks that Gracchus' well-known *inimicitiae* with Scipio make everyone expect that he would be harsher towards his enemy than his colleagues (38.52.9). His refusal to avail himself of the opportunity to pursue his private quarrel with Africanus or to increase his renown at the great man's expense, as the Petillii are doing, is contrary to public expectations. The implication is that most tribunes would not have demonstrated Gracchus' scruples; his is the exception that proves the rule.

Ambition and personal interests are not the only causes of tribunician strife in Books 21-45. Some of the more rancorous tribunes appear to be driven by sheer recalcitrance towards the political élite. In most such cases the narrative is characteristically silent about the motives of the tribunes in question, but the rhetoric attributed to them vividly conveys their contumacy. The clearest example of this attitude is that of Q. Baebius, the tribune whose speeches strengthen the popular opposition to the declaration of a second Macedonian war (31.6.3-6). Livy characterises Baebius as a throwback from the 'Struggle of the Orders' who 'attacked the fathers by making accusations in the ancient way' (31.6.4: *uiam antiquam criminandi patres ingressus*). His allegations that the senators are trying to oppress the plebs by forcing continuous wars on them hark back to the class-based rhetoric

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<sup>417</sup> Gracchus' *inimicitiae* with Scipio is mentioned repeatedly in the account of the 'Trials of the Scipiones': 38.52.9; 38.53.6; 38.57.4.

(N.B. the opposition of *patres* and *plebs*) of the tribunes in Livy's first pentad, and to their tactic of inciting *seditio* as a means of resisting/disrupting patrician rule. They are also baseless and, in the absence of any mention of ulterior motives, come across as driven by nothing but a kind of archaic tribunician proclivity for undermining *auctoritas senatus*. Q. Baebius Herennius and C. Publicius Bibulus deploy the same inflammatory argument – that Rome's leaders are using war to keep the plebs oppressed – to attack their *nobilis* enemies in their invectives.<sup>418</sup> As mentioned above, these tribunes do have other, more personal motives for their diatribes. But if they are not motivated simply by opposition to the authority of the élite, as the Baebius of the Macedonian *rogatio* appears to be, their arguments are no less fallacious and their rhetoric no less extreme, and they contribute to the impression that tribunes of the plebs have a peculiar propensity for sedition. The sense that this propensity is a relic of ancient plebeio-patrician discords, explicitly evoked at 31.6.4, is also present in Livy's account of the controversy that attended the candidacy of C. Varro and which elicited Herennius' attacks on the senate in the first place. Contests of this sort, between populist *noui homines* and cliquish *nobiles*, were a regular feature of the plebeio-patrician Republic, but Livy associates it instead with the earlier struggles for access to the consulate by juxtaposing *patres* and *plebs*. In this context a demagogic tribune who rails against the *patres* is not at all out of place. And since the basis of his argument in favour of Varro's candidacy is the need for new military leadership, his accusation that the *nobiles* are deliberately prolonging the war is not inappropriate, however libellous it may be. The same cannot be said of Publicius' argument to the same effect. For, although he wants to strip the *nobilis* Marcellus of his command, he is not represented as arguing in favour of a *nouus* replacement. The tribune's attack on the *nobiles*' leadership of the war comes across as nothing more than an outrageous calumny. It reinforces the impression that reckless antagonism towards the political leadership of the *res publica* is an enduring, possibly even inherent characteristic of the tribunate and of the sort of men the office attracts.

Whether they are motivated by *ambitio*, personal alliances and enmities, or by sheer rebelliousness, the disruptive tribunes of Books 21–45 are alike in acting either alone or in pairs, without the general support of the college. As the previous chapter

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<sup>418</sup> Herennius: 22.34.3–4, 7–8; Publicius: 27.21.2. On the calumnious argument that the *nobiles* use war to oppress the *populus*, see the section on the rhetoric deployed against Fabius Maximus in the next chapter (4.2.2).

showed, Livy's depiction of the tribunes who act for the benefit of the *res publica* (with the notable exception of Ti. Sempronius Gracchus) conveys a sense of collegiality and concord, and this in turn throws the individualism of their more turbulent colleagues into sharp relief. In a few cases, Livy foregrounds this individualism by depicting the opposition of other members of the college to their rogue fellows.<sup>419</sup> More often, however, the narrative's silence regarding the other tribunes is what gives the impression that their colleagues are alone in disrupting public affairs or pursuing dangerous goals. In reality, of course, it only took a single tribune's *intercessio* to block a contentious bill or bring a malicious prosecution to a halt. Those tribunes who did not provoke tribunician opposition must have had their colleagues' tacit consent to pursue disruptive policies, if not their support. But Livy's silence obscures the frequent acquiescence of the college in such policies, and affirms instead the threat to *concordia* and good government posed by office-holders who pursue their goals without regard for the opinions of their colleagues. In the *AUC* tribunician disorders, like those caused by other magistrates, originate for the most part in the reckless self-interest of individuals.

This is not to say that every instance of acrimony involving tribunes originates with the actions of solitary, rancorous individuals. Book 39 contains three examples of tribunician *contentiones* in which no tribunes are referred to by name; instead, in each case Livy gives the impression that the college was divided more-or-less evenly over a political matter. First, in the consular elections of 185, the historian reports that there were 'great disputes' among the tribunes over the appropriateness of the consul App. Claudius Pulcher's canvassing for his brother Publius: the tribunes 'fought either against the consul or out of zeal for him', and because of their *contentiones* 'the assembly was thrown into confusion several times' (39.32.12: *magnis contentionibus tribunorum quoque plebis, qui aut contra consulem aut pro studio eius pugnabant, comitia aliquotiens turbata*). Later, there is another 'great dispute', *magna contentio*, over whether the armies of Hispania should be allotted to the new praetors or remain

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<sup>419</sup> E.g. Livy's note that P. Rutilius' bill to annul the contracts let by the censors Gracchus and Pulcher was submitted 'under the name of one tribune', *sub unius tribuni nomine* (43.16.6), succinctly reveals that the tribune did not have his colleagues' support; Livy had no other reason to point this out, since there was nothing exceptional about a single member of the college proposing legislation: Briscoe 2012: 441.

under their current commanders (39.38.8).<sup>420</sup> Each side in this debate has support from tribunes and a consul: the tribunes on one side threaten to veto any *senatus consultum* to recall the current commanders, while the tribunes on the other threaten to halt all public business if their opponents veto the *senatus consultum* (39.38.9). Finally, there is a heated dispute among the tribunes over the legitimacy of the curule aedile-elect Q. Fulvius Flaccus' candidacy for the praetorship left vacant by the death of C. Decimius. Once again, the college is divided, one 'part of the tribunes of the plebs', *pars tribunorum plebis*, against allowing a man to stand for or hold two curule offices at once, the other *pars* in favour of allowing the people to elect whomever it wished to high office (39.39.3-4).<sup>421</sup> Fulvius refuses to drop out of the electoral contest despite the pleas of the consul L. Porcius (39.39.8-12), and there is a 'great argument among the tribunes, both between themselves and with the consul' (39.39.13: *ingens certamen tribunis et inter se ipsos et cum consule fuit*). In this case, as in the two preceding, the tribunician college appears to be divided to the point of deadlock, and here as in the other episodes the impasse caused by the tribunes' *discordia* has to be resolved externally, by the senate (on which, see section 3.2.3 below).

At the beginning of this section, it was emphasised that in the *AUC* tribunician disturbances are usually to be explained by the motives of the tribunes responsible, and not by the use of the tribunes' extensive powers *per se*. This is true of the general impression that Livy gives in Book 21-45, but the three episodes constitute a noteworthy exception. Together, they illustrate the tribunate's capacity to exacerbate political discord even when the office's powers are not being misused to serve the personal goals of individuals. There is no suggestion in any of these episodes that the tribunes involved are motivated by private interests; the tribunes' *discordia* therefore appears to arise from genuine differences of opinion about the morally-ambiguous matters under consideration. Yet their *discordia*, despite its legitimacy, and despite the absence of private motives or malicious intentions, nevertheless disrupts political

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<sup>420</sup> The praetors currently in the two Spanish provinces wanted to be recalled with their armies to Rome to celebrate triumphs (39.38.5-6), but apparently the new praetors had no desire to take command of these provinces with only fresh, inexperienced troops: Walsh 1994: 153; Briscoe 2008: 346.

<sup>421</sup> Holding two offices simultaneously had been forbidden by the *lex Genucia* of 342 (7.42.2); regardless of the historicity of this law, its mention in the *AUC* means that it possessed legal force in Livy's literary *res publica*: cf. Walsh 1994: 154; Feig Vishnia 1996: 120-1; Briscoe 2008: 349. On the *lex Genucia* and Livy 7.42.2 see Oakley 1998: 23-6.

life. This is a worrying revelation, as it suggests that the powers of the tribunate can threaten the *concordia* of the Roman state even when they are not being abused.

### 3.2.2 The consequences of tribunician misconduct

In his argument with Aburius, Gracchus takes it for granted that the self-interested use of the powers of a magistracy, especially the tribunate, is immoral and so sets a bad *exemplum* for future office-holders (39.5.2-5). The *exempla* provided by Books 21-45, however, demonstrate that using the tribunate's powers for personal goals can have serious and even dangerous consequences.

Livy shows that, at the very least, abusing the tribunate's power causes or exacerbates *discordia*. The capacity of the tribunate to aggravate political conflicts is apparent even from cases which do not necessarily entail the abuse of *tribunica potestas*: witness the effect of the tribunes' participation in the three *contentiones* in Book 39, discussed above. These episodes demonstrate how the tribunes' ability to advocate a cause before a *contio* and their right to veto their colleagues' and other magistrates' decisions could disrupt public business and intensify political divisions. This lesson is made even more clearly by the tribunes Livy depicts as abusing their powers, such the Sempronii in the contest over the censorship (37.57.12-58.1) and P. Rutilius in the *publicani*'s quarrel with the censors Gracchus and Claudius (43.16). In both cases, the tribunes' opportunistic intervention in already contentious affairs only increases *discordia*, not to mention the shame of those involved in it: the Sempronii's prosecution of Glabrio sharpens the divisions in the senate between *nobiles* and *noui homines*, while the Rutilius' prosecution of the censors widens the rift between the senate, firmly behind the censors, and the wider Roman élite which included the *publicani*.<sup>422</sup> The prosecution of the fraudulent *publicanus* M. Postumius Pyrgensis by the tribunes Sp. and L. Carvilius stands as an even more troubling *exemplum*. The senate had sensibly decided not to risk offending the *publicani*, on whose services the state depended at the height of the Hannibalic War, by pursuing one of their number at that moment, but the tribunes, spurred on by the unpopularity and notoriety of the matter, imposed a fine on Postumius regardless (25.3.12-13). As argued above, the

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<sup>422</sup> Livy conveys the extent of this *discordia* among the upper classes by noting – unusually, for an historian who shows little interest in psephology – that ‘eight of the twelve centuries of *equites* and many others of the first *classis*’ voted to condemn C. Claudius Pulcher (43.16.14: *ex duodecim centuriis equitum octo censorem condemnassent multaeque aliae primae classis*).

tribunes' prosecution is motivated by their desire to win the favour of the *populus* rather than by any desire to see justice done. Their opportunism and ambition not only alienates the *publicani*, as the senate feared, but provokes the *publicani* to riot at the *concilium plebis* (25.3.18); this upheaval may have resulted in bloodshed and, as the consul Q. Fulvius Flaccus remarks, *seditio*, had the Carvili not been convinced by the consul to dismiss the assembly (25.3.19).

This physical expression of the *discordia* generated by the tribunes' actions has an attendant moral effect, the implications of which are every bit as dangerous as the riot itself. Fulvius recognises this effect immediately, warning the tribunes that they have lost their authority and effectively been 'brought to order' or 'humbled', '*in ordinem coactos esse*' (25.3.19), by the rioting *publicani*. At the meeting of the senate that follows, this point is reiterated and the full implications of the riot are set out:

Postumium Pyrgensem suffragium populo Romano extorsisse, concilium plebis sustulisse, tribunos in ordinem coegisse, contra populum Romanum aciem instruxisse, locum occupasse ut tribunos a plebe intercluderet, tribus in suffragium uocari prohiberet (25.4.4).

Postumius Pyrgensis had wrested the vote from the Roman people, brought low the *concilium plebis*, reduced the tribunes to the ranks, formed a line of battle against the Roman people, seized ground so as to cut off the tribunes from the plebs, prevented the tribes from being called to vote.

The senate recognises that, even though violence has been avoided, the riot had undermined both the authority of the tribunes and the *libertas* of the Roman people as expressed in its right to vote in duly-constituted assemblies. Indeed, the senate acknowledges that only the willingness of the tribunes to allow themselves and the plebs to be overcome by the rioters prevented bloodshed (25.4.5-6). This, however, 'set[s] a harmful precedent', *pernicioso exemplo factam*, for anyone willing to use force to get their way (25.4.7). Thus, though not guilty of violence themselves, by pursuing Postumius in spite of the decision of the senate not to do so, the tribunes are responsible for undermining the power of their office and the *libertas* of the *populus* that they are charged to defend. Their *exemplum* illustrates the negative effects that reckless and self-interested tribunician acts can have on the moral order on which the *libera res publica* rests.

The detrimental impact of the Carvili's prosecution on the collective morality of the Romans has parallels elsewhere in Livy's depiction of tribunician activity.



Prosecutions, in particular, threaten to undermine both the authority of the magistracies and to demoralise the populace, much as the Carvili's prosecution undermined the authority of the tribunate and of the *concilium plebis*. It is concern for such moral effects that moves the senate to forbid Cn. Baebius to prosecute the unpopular censors at 29.37.17. The *patres* stop the trial from going ahead not because Salinator and Nero are innocent, but because they fear that allowing censors to be prosecuted while in office will undermine the *populus*' respect for the magistracy and so 'make the censorship subject to popular favour hereafter' (*ne postea obnoxia populari auae censura esset*).<sup>423</sup> The senators' fears are well-founded, for they are borne out at 43.16, in P. Rutilius' attack on the censors Gracchus and Pulcher. The disrespect in which the censorship is held is manifest first by the insolence of the *publicani* and Rutilius in seeking to force the censors to auction the public contracts anew, then by the heckling of Pulcher at the tribune's *contio* (43.16.8), and finally by the censors' trial, at the instigation of Rutilius, on the ludicrous charge of *perduellio* (43.16.11). The entire episode reflects the moral debasement of the Roman *populus* (specifically its upper echelons, many of whom vote to condemn Pulcher at 43.16.14) as well as the waning of magisterial *auctoritas*, which ought to command the people's respect, and once again it is a tribune motivated by private interests who is the instigator of these manifestations of disrespect and the *discordia* that follows. As the preceding chapter demonstrated, Gracchus himself, as a tribune, demonstrates an awareness of the moral impact of his fellow tribunes' actions on the *populus*, when he argues that the Petillii's prosecution of Scipio Africanus will bring disgrace upon them.<sup>424</sup>

Yet, damaging as they are to the *res publica*, moral corruption, political discord, and even the violence of Postumius and the *publicani* are not the worst consequences of tribunician misconduct in Books 21-45. On rare occasions, tribunes of the plebs threaten the very security of Rome and its empire. At 31.6.4, Q. Baebius

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<sup>423</sup> Cf. M. Metellus' attempt to prosecute the censors Furius and Atilius, which was blocked by the other nine tribunes: Livy says nothing of the tribunes' motives, but his statement that the censors were 'forbidden' by the tribunes 'to plead their cases *while in office*' (24.43.3: *uetiti causam in magistratu dicere*) invites the reader to interpret this as an attempt to preserve the dignity of the censorship.

<sup>424</sup> See 38.52.11: *ut sub rostris reum stare et praeberere aures adolescentium conuiciis populo Romano magis deforme quam ipsi sit* ('that for him [sc. Scipio Africanus] to stand as a defendant beneath the Rostra and to subject his ears to the bawling of young men would be a greater dishonour to the Roman people than to himself'). Cf. Gracchus' less direct, but no less forceful, attempt to evoke shame at the threatened imprisonment of L. Scipio, 38.60.5-6.

temporarily undermines the security of the empire when his inflammatory oratory emboldens the war-weary *populus* to vote against initiating a second war against Philip V of Macedonia. The consul P. Sulpicius Galba's speech (32.7), as well as *consensus patrum*,<sup>425</sup> leave no doubt about the necessity of another war to protect not only Rome's interests but Italy itself from invasion. The tribune's unwelcome involvement in this matter therefore represents a genuine threat to Roman power and safety. A similar threat is posed by C. Publicius Bibulus' prosecution of his *inimicus* Marcellus. Next to Fabius Maximus Verrucosus, Marcellus has been Rome's most valuable commander up to that point in the Hannibalic war. Bibulus' efforts to undermine the people's confidence in Marcellus and to prorogue his command thus constitutes a threat to the war effort, and very strikingly pits the tribune's private interests against the interests of the public. Fortunately for the Romans, in this case and in the previous one, they allowed themselves to be dissuaded from following the course of action advocated by the tribune (27.21.4). They were not so lucky in Book 22. In a series of passages in the middle of that book, which will be discussed in detail in the next chapter, Livy shows how the Romans turned against the dictator Fabius Maximus' wise strategy of avoiding full-scale engagements with Hannibal. Two tribunes of the plebs, M. Metilius and Q. Baebius Herennius, play prominent parts in this sequence of events: Metilius denounces the *cunctator's* leadership and promulgates a bill to grant the dictator's *magister equitum*, M. Minucius Rufus, equal powers of command (22.25.3-11), and later Herennius, as mentioned above, attacks not only Fabius but the entire *nobilitas* in an effort to see his relative Varro elected consul (22.34.3-11). Both tribunes succeed in their goals, and both successes result in military defeats. In the first of these, Minucius is at least saved from annihilation by Fabius; the later defeat of the army under Varro's command, at the Battle of Cannae, is total. As *exempla* illustrating the dangers of allowing demagogic tribunes sway over military matters, these two episodes could hardly be more persuasive.

With *exempla* such as these and the others discussed above, Livy demonstrates the dire public consequences of tribunes' private feuds and ambitions. He shows that,

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<sup>425</sup> The senate's support for the war is anticipated by its approval of Galba's proposal that sacrifices and prayers to be offered for the start of a new war at 31.5.3-4. The *patres* give their assent to a Macedonian war in their reply to the Athenian *legatio*, in which they proclaim that one of the consuls will be assigned Macedonia as his province (31.5.9). Their support for the war is reiterated by their anger at Baebius and the people for the initial rejection of the *rogatio* (31.6.5-6), and by Galba himself in his speech (31.7.14).

even at the apogee of Roman *concordia*, the tribunate could and did sow *discordia*, undermine the sanctity of Rome's institutions and the moral order upon which they rested, and, under certain circumstances, imperil the empire and the state itself. None of this is unprecedented, of course: in the earlier books of the *AUC* too, tribunes provoke internal strife and incite the *populus* against the *patres*, and occasionally imperil Rome itself by leading or threatening *secessiones*. Books 21-45 therefore reinforce the dangers associated with the tribunate, and with the abuse of the tribunate's power in particular. What distinguishes the tribunes' rôle in the later books is not that the tribunate has become innocuous, but that, without losing its potential for disruption, it has been integrated into the Roman system of government and thereby gained regular functions that are necessary and beneficial to the *res publica*. As the previous chapter showed, these functions occupy more space in Livy's later books than the abuses of tribunician power discussed above. The positive aspects of the tribunate are more abundantly in evidence, but its propensity for political disruption lingers throughout Livy's extant narrative.

But although the later disruptions follow the pattern of causes and effects established in the earlier books, the nature of the threat posed by these disturbances is not entirely static. In the third decade of the *AUC*, as in the first, the greatest danger posed by turbulent tribunes is to Rome's safety from external threats. The undermining of the strategy of *cunctatio* and the defeat at Cannae in which it results is the most striking *exemplum* in Books 21-45 of the effects that unchecked tribunician activity can have, but it has no parallel in the remaining books. In the fourth and fifth decades, as Rome's wars cease to be fought on the Italian peninsula, so the tribunes cease to pose a threat to Rome's safety from external danger; the only time Italy faces invasion is at the very start of the fourth decade, and this is also the last time in Livy's extant books that a tribune of the plebs, Q. Baebius, interferes dangerously in military matters, in the *contentio* over the declaration of war on Macedonia. On the domestic front, however, there is some suggestion that the effects of tribunician activity are getting worse. The two prosecutions of censors by tribunes discussed above illustrate this phenomenon. In Book 29 the *patres* are able to prevent Cn. Baebius from launching a trial that will bring the censorship into disrepute; in Book 43, however, the *patres* are impotent to halt Rutilius' campaign against censors who are far less blameworthy than their predecessors in the earlier episode, and the *discordia* that the

tribune's prosecution generates confirms the earlier senators' worst fears.<sup>426</sup> Only the moral authority of one of the censors, Gracchus, averts the complete disaster, and only at the last minute (43.16.15-16). Between the two episodes, the capacity of individual tribunes to throw public affairs and the established social and political order into chaos, despite opposition from the leading men of the state, appears to have increased, while the ability of the *patres* to curtail the excesses of the people and their tribunes seems to have declined. The effect feared by the senate in Book 29, that subjecting serving censors to a prosecution would put the censorship at the mercy of popular will, also appears to have come to pass from the number of votes cast by the affronted segment of the *populus*, the equestrian and first *classis* centuries to which the *publicani* belonged, against the censor Pulcher (43.16.14). A comparison between the two prosecutions suggests that the relationship between self-serving tribunes and the *populus* has become more dangerous to *concordia* of the state following the Hannibalic War. This is not to say that his account of domestic affairs describes anything like a steady worsening of the tribunate's influence on the *populus*. A somewhat more progressive decline in the tribunate's public rôle is evident in tribunes' involvement in élite competition over *honores*, of which there are more examples in the last fifteen extant books of the *AUC* than there are in the preceding ten. To the instances of the entire college becoming embroiled in electoral contests (39.32.12; 39.39.13-14) and the distribution of provincial commands (39.38.8-10) in Book 39, one may add the Sempronii's involvement in the campaign for the censorship (37.57.12-58.1), and several tribunician interventions in controversies over *ouationes* and triumphs.<sup>427</sup> The tribunes' involvement in these matters is often explicitly partisan, and even when it is not the cause of political discord it does nothing to resolve it. The concentration of these episodes in the last of Livy's extant books does suggest that the tribunate was becoming a more disruptive factor in the internal contests of the political élite as the narrative progressed, and as élite competition itself became more fierce. The evidence is sparse, but it appears that, as the danger from external enemies diminished, self-interested or partisan tribunes

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<sup>426</sup> Rutilius' prosecution of the censors can also be compared with the earlier attempt to do the same by Metellus at 24.43.2-3, in which the other tribunes prevented the censors from being brought to trial. On the apparent reluctance of Rutilius' colleagues to prevent the trial, see the discussion in sections 3.2.3 below.

<sup>427</sup> Triumphs: 33.22; 35.8.9; 36.39.6-10; 39.4.3-4; 45.36.1; *ouationes*: 31.20.5-6; 32.7.4. On these disputes see Pittenger 2008.

began to pose more of a threat to Rome's internal concord. Worse was to come in the *AUC*, and it is likely that the episodes in the last of Livy's extant books represent the beginnings of a negative trend in tribunician activity, which would see tribunes exacerbating *discordia* among Rome's élite and stirring up the *populus* against them.

### 3.2.3 Containing tribunician *discordia*

Whatever upheavals lay ahead in the lost books of the *AUC*, in Books 21-45 tribunes rarely disturb the harmony of the *res publica* for long. With a handful of significant exceptions (which will be discussed in the next chapter), disruptive tribunician behaviour is generally countered and its damage limited by the senate, or by other magistrates, or indeed by other tribunes of the plebs. As mentioned, there is no single or unified method of dealing with difficult tribunes in the *AUC*, but some patterns do emerge from Livy's treatment of the subject, and these reveal quite a lot about the nature of the tribunate and its place in his version of the Roman state.

The most obvious obstacle to tribunician excess lay with the tribunes themselves. The power of *intercessio* gave any tribune the right to veto the actions of any of his colleagues; in theory, this meant that it only required one of the ten tribunes to curtail any disruptive or dangerous behaviour by his colleagues. In the first century, the logic of this arrangement was deployed to defend the tribunate and justify retaining it. Cicero puts the axiom into the mouth of the character that bears his name in the *De legibus* for this purpose,<sup>428</sup> and Livy follows suit. In his second book, the historian has Ap. Claudius make the point to his fellow senators:

Ap. Claudius uictam tribuniciam potestatem dicere priore anno, in praesentia re, exemplo in perpetuum, quando inuentum sit suis ipsam uiribus dissolui. neque enim unquam defuturum qui ex collega uictoriam sibi et gratiam melioris partis bono publico uelit quaesitam; et plures, si pluribus opus sit, tribunos ad auxilium consulum paratos fore, et unum uel aduersus omnes satis esse. darent modo et consules et primores patrum operam ut, si minus omnes, aliquos tamen ex tribunis rei publicae ac senatui conciliarent (2.44.2-4).

Ap. Claudius said that the tribunician power had been overcome in the previous year, was overcome in the current situation, and was forever overcome through the example, since there was a way to undo it with its own force. For there would never be lacking someone who wanted both a victory for himself sought at the expense of a colleague and the

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<sup>428</sup> Cic. *Leg.* 3.24: *quod enim est tam desperatum collegium in quo nemo e decem sana mene sit?* ('For what college is so hopeless that none of the ten in it is of sound mind?')

favour of the better types sought for the public good; and there would be several tribunes, if several were necessary, ready to help the consuls, and one would be enough, though all [the others] were opposed. Just let both the consuls and the foremost of the fathers make an effort so that, if not all, some, however, of the tribunes would be won over to the *res publica* and the senate.

Senators appeal to this axiom later in the *AUC* (N.B. 4.48.5-9), and in Books 21-45 there are indeed occasions on which tribunes are restrained by their colleagues. When M. Metellus tries to bring the censors Furius and Atilius to trial because of a personal grievance, the other nine tribunes simply forbid the censors to stand trial while in office (24.43.2-3). Ti. Gracchus pre-emptively vetoes any attempt by the Petillii to try Scipio Africanus *in absentia* (38.52.10). Nor is *intercessio* the only recourse available to tribunes who want to restrain their colleagues, as Gracchus shows, first by convincing the Petillii to abandon their pursuit of Africanus (38.52.11-53.5) and then by convincing Aburius to withdraw his veto (39.5.1-6), by the sheer moral force of his arguments.

Yet these examples are exceptional, for in fact Livy more commonly depicts tribunes failing to restrain their colleagues. The power of *intercessio* turns out to be less decisive than Ap. Claudius suggests. After all, vetoes can be withdrawn, and not just in the face of good arguments or moral *auctoritas*. Q. and L. Mummius drop their opposition to the Petillii's bill to investigate the money taken from Antiochus III in the face of Cato's *auctoritas*, brought to bear here not for the public good but in the service of his personal enmity towards the Scipiones.<sup>429</sup> M. and P. Iunius Brutus withdraw their veto against M. Fundanius and L. Valerius' bill to repeal the *lex Oppia* under duress when their house is besieged by women (34.8.1-2). Moreover, the efficacy of the veto is limited when the tribunician college is evenly split over some matter: the Bruti's opposition to the repeal bill did not kill it off, nor did the threats of mutual *intercessio* resolve the dispute over the Spanish commands at 39.38.9. All of these cases revolve around genuinely controversial matters, over which the élite appears to have been divided, at least for a time. But there are other occasions on which the college failed to restrain one of its members, despite seemingly unanimous opposition to that member in the senate. The most notorious case is that of Q.

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<sup>429</sup> The Mummi's veto: 38.54.5; withdrawn under pressure from Cato: 38.54.11: *M. Cato... Mummios tribunos auctoritate deterruit ne aduersarentur rogationi* ('M. Cato...prevented the tribunes, the Mummi, from opposing the bill with his *auctoritas*').

Claudius' bill to limit the capacity of the ships owned by senators (21.63.3-4). Livy emphasises the near-unanimity of senatorial opposition to the bill by claiming that C. Flaminius alone of that order supported it, yet still the law passed. The historian's silence does not conceal the fact that, on this occasion, not one tribune could be found who was willing to triumph at his colleague's expense and win the favour of the senatorial order. The same is true of Rutilius' *rogatio* and his subsequent prosecution of the censors. In the first instance Livy stresses Rutilius' isolation from his colleagues by remarking that the tribune's bill bore only his name (43.16.6: *sub unius tribuni nomine*), but his lack of support from his colleagues evidently failed to develop into actual opposition, to either his *rogatio* or his prosecution, and despite the *principes'* support for the censors. Again, Livy does not make anything of this, but his failure or refusal to address the matter directly does not diminish its significance.<sup>430</sup> Livy's narrative reveals that the axiom first articulated by Ap. Claudius is a fallacy: the tribunician college could not always be relied upon to control its members on behalf of the senate and consuls.

Thus, it often falls to the senate or to individual *principes* to limit the damage done by tribunes of the plebs, and in Books 21-45 both are generally up to the task. Prominent senators are responsible for ameliorating a few of the difficult situations provoked by tribunes. These men do not have to resort to any formal powers to overcome their opponents; indeed, the tribunate's sacrosanctity and right of *intercessio* made it effectively impossible even for other magistrates to take direct action against tribunes. Nevertheless, Livy shows that the leading men in the state are sometimes able to overcome rancorous or recalcitrant tribunes with the 'soft power' of rhetoric, by combining reasoned argument with assertions of *auctoritas*. His account of the consul P. Sulpicius Galba's response to the initial refusal of the assembly to vote for a new Macedonian war is illustrative. The tribune at the heart of this episode, Q. Baebius, is not solely responsible for the first vote – Livy attributes the result to the war-weariness of the *populus* (31.6.3) – but his insinuations that the senate is using continuous war to oppress the plebs (31.6.4) have not helped the

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<sup>430</sup> Here again Livy may be attempting to downplay the extant of internal conflict and the limitations of senatorial control in the late third and early second centuries. A telling comparison can be made with the failure of the opposition to the C. Valerius Tappo's *rogatio* (38.36.7-8): the four tribunes initially veto the bill because it has not been put to the *populus ex auctoritate senatus*, but significantly Livy does not indicate that the senate itself opposed the bill. Hence, the tribunes' withdrawal of their *intercessiones* cannot be interpreted as a failure to defend senatorial interests, nor Valerius' success as a victory over the senate.

situation. Galba does not address Baebius directly, but his speech at 31.7 does respond to the tribune's allegations, and in the course of convincing the people to support the war the consul refutes the claim that the war is intended simply to keep the plebs from even enjoying peace. Galba spends most of his time convincing his audience of the necessity of war by invoking historical *exempla* (31.7.2-13), and ends by reasserting the *auctoritas patrum* that the tribune's diatribes were intended to undermine by instructing his listeners to ' "Go and vote...and order that which the *patres* have decided" ' (31.7.14: *'ite in suffragium...et quae patres censuerunt uos iubete'*). The combination of reason and the appeal to the traditional deference owed to the senate undoes any lingering influence the tribune's demagogic rhetoric may have had, and the people duly vote for war (31.8.1).

Other *exempla* of a leading political figure using oratory and *auctoritas* to rein in a troublemaking tribune are not quite as neat. Livy's version of Scipio Africanus' response to the Petillii's accusations (38.51.7-12), for example, does not address the tribunes' allegations at all. Rather, by evoking the memory of his greatest achievement, his victory at Zama, the great man uses his charisma and the reverence that the people still hold for him to undermine the tribunes' attempt to bring him to account. The episode pits the legal authority of the tribunes against Scipio's personal and still considerable *auctoritas*, and the latter overcomes the former. It is left to Gracchus to counter the Petillii's efforts to put Scipio on trial with a reasoned and moral argument. In contrast, Livy's curt summary of Marcellus' reply to the tribune Bibulus' accusations focuses on his argument: 'This speech of the tribune Marcellus so refuted with the recollection of his deeds that not only was the bill to abrogate his command voted down, but the following day all the centuries elected him consul by an enormous consensus' (27.21.4: *hanc tribuni orationem ita obruit Marcellus commemoratione rerum suarum ut non rogatio solum de imperio eius abrogando antiquaretur, sed postero die consulem eum ingenti consensu centuriae omnes crearent*). Despite its brevity, Livy's summary of Marcellus' reply clearly conveys the idea that the man's argument, rather than his personal *auctoritas*, countered or overcame (*obruit*) the tribune's allegations. Like Africanus, Marcellus invokes the memory of his achievements in his defence, but unlike Africanus he does so in direct response to Bibulus' attacks, to correct the invidious interpretation of the general's campaigns that the tribune advocated, not to distract his audience from those attacks. Scipio's use of his private *auctoritas* to outmanoeuvre the Petillii is, despite his



innocence of their accusations, more problematic than Marcellus' straightforward effort to disprove Bibulus' allegations. Both men, however, succeed in putting a stop to tribunician activity that Livy depicts as malicious (albeit only momentarily in the case of Scipio's persecution).

But Livy shows that the power of individuals to control tribunician disturbances is limited. Reasoned argument and appeals to *auctoritas*, even *auctoritas patrum*, do not always succeed, even against tribunes whose motives are not self-interested or seditious. The *certamen* between the tribunes C. and L. Arrenius and the dictator Q. Fulvius Flaccus at 27.6.2-11 is a salient example. The tribunes' challenge to Fulvius reflects a concern for the public good: their objection to the prospect of the dictator's election by the *comitia* over which he presides arises from legitimate concerns about the extension of magisterial powers beyond traditional bounds and the *foedius exemplum* his election could set (27.6.4). The reply that Livy attributes to Fulvius is equally reasonable, countering the Arrenii's objections 'with the authority of the senate, with the enactment of the plebs, and with precedents' (27.6.6: *dictator causam comitiorum auctoritate senatus, plebis scito, exemplis tutabatur*). The dictator cites a law, passed after Flaminius' death at Trasumenus, that authorised the people to elect whomever they wished, as often as they wished, to the consulate, as long as there was war in Italy. He stresses the law's legal and moral authority by relating, in legalistic language, that it was 'brought before the plebs by the authority of the fathers, and the plebs enacted' it (27.6.7: *ex auctoritate patrum ad plebem latum plebemque sciuisse ut...*). In doing so, he enlists *auctoritas patrum* and *plebis scitum* to his cause, and he fortifies the moral strength of his case with *exempla*, the most authoritative being that of Fabius Maximus, who was elected to consecutive consulates in 215-214 and who, Fulvius assures his audience, 'would surely never have allowed his consulate to be extended unless it was in the public interest' (27.6.8: *sibi continuari consulatum nisi id bono publico fieret profecto nunquam sisset*). The case Livy attributes to Fulvius' is thus well-founded, but it does not persuade the tribunes to withdraw their *intercessio*. The dictator and the tribunes argue for a long time until, unable to resolve their impasse, all agree to abide by the decision of the senate (27.6.9). The episode reveals that even well-meaning tribunes may not be amenable to reasoned, authoritative argument, even when the argument is made by as imposing a figure as Q. Fulvius Flaccus. The senate is forced to resolve what the dictator and the tribunes cannot settle between themselves. In the event, military

necessity trumps the tribunes' concerns about the traditional limitations of magisterial power: the *patres* decide to allow Fulvius to stand because, under the current circumstances, Rome needs old and experienced generals (27.6.10), and the tribunes accept their decision (27.6.11).

This is far from the only tribunician *certamen* that the senate has to resolve. Several cases, like the one just discussed, involve tribunes who are motivated by concern for *mos maiorum*. M. Fulvius and M'. Currius object to T. Quinctius Flaminius' candidacy for the consulate on the grounds that hitherto he has only held a quaestorship (32.7.8-9). Though it was not strictly illegal before the passage of the *lex Villia annalis* in 180, it was not traditional for a man to bypass the lower magistracies. And, as the tribunes argue (32.7.10), by treating the lesser offices with contempt the *nobiles* were aspiring to the consulate without first giving proof of their worthiness. The tribunes' interest in preserving the traditional *cursus honorum* stems from their desire to ensure that Rome's consuls are fit for office, and perhaps also to ensure that the aedilate and the praetorship are not deprived of talent. Their threatened *intercessio* apparently fails to convince Flaminius to drop out of the race, however: Livy reports curtly that 'The matter passed from the quarrel on the Campus into the senate' (32.7.11: *res ex campestri certamine in senatum peruenit*). Once again the *patres* have to resolve a dispute between tribunes and a candidate for high office (and once again they decide in favour of letting the people choose whomever they wish: 32.7.11). As in the previous case, the tribunes, to their credit, acquiesce in the senators' *auctoritas* (32.7.12: *in auctoritate patrum fuere tribuni*).<sup>431</sup> Another comparable episode, the candidacy of Q. Fulvius Flaccus for the praetorship when he had already been elected to the curule aedilate (39.39), has been mentioned already. In this case, instead of a straightforward dispute between the would-be candidate and objecting tribunes, the *certamen* involves one of the consuls, L. Porcius, and tribunes on both sides of the debate (39.39.3-4, 13). Since no solution is forthcoming, the consul turns to the senate, which ingeniously resolves the matter by decreeing that there are already enough praetors (39.39.13-15).

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<sup>431</sup> Cf. the tribunes' objections to the premature candidacy of P. Scipio, the future Africanus, which are withdrawn because of the overwhelming *fauor* that Scipio elicits from the assembled citizens. This case is problematic, because the tribunes submit to the will of a *priuatus* rather than to *senatus auctoritas*: see Chapter 4.1.1.

These episodes do not necessarily reflect badly on the individual tribunes involved, since the tribunes seem to be acting out of concern for the public good. They do, however, reveal something problematic in the nature of the tribunate. In an evenly-divided college, the tribunes' power to veto one another effectively means that their *discordia* can last indefinitely. The risk that discord within the tribunician college poses to public business is demonstrated by the deadlock over the recall of the armies from Hispania at 39.38.8-10. On one side of the dispute the tribunes threaten to veto any *senatus consultum* that orders the current armies in Hispania home; on the other, they vow to block the transaction of any public business if the opposing tribunes deploy their veto as threatened (39.38.9). The threat to the day-to-day government of Rome appears to have carried more weight with the senate, which decides in favour of the new praetors and sends them to Hispania with additional troops (39.38.10). Here again the senate resolves the tribunes' internal dispute, but the sense that the danger posed to government influenced the *patres'* decision is difficult to avoid. But this case, which is in some ways comparable to the collective failure to prevent Q. Claudius' bill from passing, is not typical of the senate's interventions to resolve tribunician *certamina*. More often, the *patres* succeed in inducing tribunes to acknowledge and submit to their collective *auctoritas*.

Though none is as severe as those in Livy's earlier books, there are many tribunician disturbances in Books 21-45. Most of these moments of *discordia* have their origins in the same selfish impulses that drive other magistrates and leading citizens to pursue disruptive policies, namely *ambitio* and personal connections – rivalries and friendships. But the distinctive character of the tribunate makes it an unusually potent force for political disruption, more so, indeed, than the curule magistracies in these books. The analysis of tribunician troubles above shows that the exceptional powers wielded by the tribunes of the plebs makes it possible for them to create *discordia* even when those powers are used with the best intentions, for example in defence of *mos maiorum*. And when they are not used with good intentions, the tribunate has the capacity to create or exacerbate *discordia* within the polity, undermine the moral order on which the polity is based, and in the right circumstances even threaten the polity's safety from its external enemies.

The individual examples of tribunician trouble cited in this chapter constitute only a small proportion of the acts performed by tribunes in Books 21-45. Moreover, the chief magistrates, other tribunes, and above all the senate are almost always able

to resolve disputes involving tribunes and bring dangerous tribunes to heel. For this reason, tribunician tumults rarely threaten the internal stability or the good governance of the *res publica* for long. But there are hints in the *AUC* that this situation has begun to deteriorate after the Hannibalic War, with tribunes playing a more frequently negative rôle in politics, particularly in contests among the élite over *honores*. This would suggest that even as early as Books 31–45 Livy begins to offer his reader glimpses of the downward trajectory of Rome’s political fortunes, in which self-interested tribunes of the plebs would play no small part.

### **3.3 Oratory in Roman politics**

It will be clear from the discussion above that oratory plays a prominent rôle in both causing and ameliorating political strife in Books 21–45. This reflects the reality of Republican period politics. Matters were considered and debated in the senate by means of discrete speeches, with each senator in turn and according to rank being asked to give his *sententiae*. Speeches in public, at *contiones*, also played a real part in politics, though whether these speeches actually managed to persuade audiences according to the *suasio/dissuasio* paradigm is debated.<sup>432</sup>

In literary terms, of course, oratory in the *AUC* often serves to dramatise confrontation and conflict and to convey the arguments, sentiments, and feelings of the participants in a more interesting and evocative manner. While speeches always have a function in Livy’s narrative, they do not necessarily affect the course of the narrative.

One of the most intense political struggles in the *AUC*, the controversy over repealing the *lex Oppia* at 34.1.1–8.3 centres on a pair of opposing speeches, and yet these speeches have no influence on the course of events. The *lex Oppia*, passed at the height of the Hannibalic War, banned women from wearing expensive clothing and large amounts of gold, and from riding in carriages in Rome (34.1.3). In 195, however, two tribunes, M. Fundanius and L. Valerius Tappo, proposed the law’s abrogation: there were debates between the law’s supporters and its opponents, and Roman matrons took to the streets to beg men to repeal the law (34.1.4–6). Livy depicts the debate over the *lex Oppia* through two long speeches in *oratio recta*: the

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<sup>432</sup> See Mouritsen’s 2017: 85–94 critical assessment of the idea that *contiones* served as occasions of genuine debate. The *suasio/dissuasio* model of contional ‘debates’, see Mommsen 1887: 3.394–4; Mouritsen 2017: 83–5.

case against repealing the law is voiced by the consul M. Porcius Cato (34.2-4), the case for repealing the law by its sponsor L. Valerius Tappo, tribune of plebs (34.5-7). Cato's speech is noteworthy for being the only one Livy puts in the mouth of this famous figure – and for its failure. The speech Livy has composed for Cato is long and elaborate, and intended to reflect the orator's famous severity and moral conservatism.<sup>433</sup> Cato argues against repealing the *lex Oppia* by warning his audience against luxury, *luxuria*, and greed, *avaritia*, of which the women's desire to overturn the law is a symptom and a portent. Cato appeals to ancestral precedents as a way of emphasising the moral decline reflected by the current circumstances, above all by the matrons' greed and their blatant intrusion into public affairs. The consul goes on to warn his audience about the dangers of *luxuria* and the *avaritia* it provokes, which, he claims, bring about the ruin of states. Cato's oration makes good use of historical *exempla* and offers a grave warning against the moral corruption caused by luxury, and yet it has no discernible effect. Livy does not describe how Cato's speech, or Valerius' rebuttal, are received by their audience. The next day, however, after a crowd of women manages to intimidate two tribunes, M. and P. Iunius Brutus, into dropping their opposition to the vote, Livy states that 'After that there was no question that all the tribes would vote to repeal the law' (34.8.2-3: *nulla deinde dubitatio fuit quin omnes tribus legem abrogarent*). Thus Cato's fine speech, and indeed that of his opponent, fails completely to persuade the Romans to resist the matrons' demands.

Livy's depiction of the failure of Cato, who by the historian's time was almost synonymous with traditional virtues, is at first glance surprising. John Briscoe took this as evidence that Livy 'has no real sympathy' with Cato's 'attitude' in the speech.<sup>434</sup> But Jane Chaplin has pointed out that Cato's concerns with *luxuria* and *avaritia* (34.4.2) mirror those that Livy himself bemoans in his *praefatio* (11); both the preface (11) and Cato (34.4.13) also refer positively to *paupertas* and *parsimonia*.<sup>435</sup> These verbal and thematic parallels indicate that Cato's speech is meant to reflect Livy's own thoughts on the historical impact of *luxuria* on Roman society, on its rôle in Rome's moral and societal decline. Livy expects his audience to understand that Cato's ominous predictions about the harmful effects of luxury and

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<sup>433</sup> Walsh 1961: 228.

<sup>434</sup> Briscoe 1981: 39-42.

<sup>435</sup> Chaplin 2000: 98-9.

greed are accurate, in part because the wisdom of the likes of Cato was ignored by their ancestors.<sup>436</sup> Here too the speech's external audience can learn from its internal audience's failure to heed good advice.

But many of the speeches discussed in detail or in passing above do affect the course of politics, for better or for worse, as well as manifesting a character's personality or concerns or dramatising a debate. A single, ordinary example is enough to demonstrate this.

The case of the assembly's initial refusal to endorse the new war with Macedonia has been discussed in some detail already. Here is a case in which two orations, one mentioned in passing *oratio obliqua* (31.6.4), the other recounted at length in *oratio recta* (31.7), convey two sides of a politically significant argument. Q. Baebius' speech does not play a strong causal rôle, since, as Livy stresses, the plebs were already worn-out by war and as such ready to vote against the bill (31.6.3). Nevertheless, Baebius exploits this war-weariness to attack the senate for not allowing the people a moment's peace (31.6.4). The next day, the consul P. Sulpicius Galba calls another assembly to vote on the motion again: before the vote he gives a speech in which he stresses the necessity of a Macedonian War, the desirability of a pre-emptive strike (31.7.2-13), and concludes by urging his audience to accept the senate's decision, noting that the consuls and the gods already support war (31.7.14-15). This time, the motion is passed by the assembly.

Baebius' invectives may have succeeded in fortifying the people's resolve to disregard the senatorial edict, but Galba's oration changes the people's minds by using rational arguments for the necessity of war, and by emphasising the respect owed to the collective wisdom of the senate and to divine omens. The significance of this episode is not hard to understand. The speeches of Baebius and Galba fulfil a narrative function, succinctly explaining why the bill of war was first rejected and then passed, without the historian having to offer an explanation in his own voice. Furthermore, the speeches serve a didactic function, providing Livy's readers with *exempla* designed to inform their own engagement in public affairs. Baebius' strategy of attacking the senate is defeated by Galba's combination of reasoned argument with an appeal to the deference owed to the senate's wisdom and authority, its *auctoritas*. Galba's audience is convinced by this speech, and it is obvious that Livy's reader is

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<sup>436</sup> Chaplin 2000: 98-9.

expected to be convinced, too; the reaction of the speech's internal audience is intended to guide its external audience's interpretation of the episode. Through Galba's speech, Livy's reader learns both the specific lesson about why the Second Macedonian War was necessary, and the more general lesson that the senate ought to guide public affairs, and that unfounded attacks on the senate are detrimental to the public good.

Political oratory in the *AUC* therefore serves a number of purposes, literary, exemplary, and narratological, and as often as not it serves to ameliorate *discordia* in public life. All in all, this reveals little about the actual rôle of oratory in Livian politics, except that it is a central feature of political life. The following chapter, however, will shed more light on this aspect of Livian politics by assessing a series of speech-acts that not only disturb public affairs, but bring Rome to the brink of destruction.

## **Conclusion**

The preceding analysis shows that the cause of political upheaval in Books 21-45 is self-interest among the political élite. The desire for renown and *honores*, personal alliances and *inimicitiae*, and sometimes simple rebelliousness generate most of the disturbances in these books, which also illustrate how dangerous these selfish impulses can be to internal concord and external security. But Books 21-45 also reveal the *remedia* for these vices: cooperation between the magistrates, the tribunes, and the senate, and ample regard for the *auctoritas* of the latter. The political virtues that the previous chapter revealed to be source of *concordia* are also an effective counter to *discordia*. Livy therefore allows the attentive reader to see that possession of these virtues by the Romans of the past was the reason for the stability and prosperity of the *res publica* in ancient times.

## **Chapter 4**

### **Discordia Deferred**

#### **Introduction**

In Books 21-45, as the preceding chapters show, Livy presented his audience with a vision of the Roman state at its best. Political conflict is not absent in this vision, but it is generally controlled and its worst effects mitigated through the combined efforts of magistrates and the senate, working together for the public good. But this is not always the case, and Livy occasionally offers hints that publicly-minded leaders and the senate may not always be capable of containing the worst effects of self-interested politics. This chapter comprises two case studies from the third and fourth decades. The first, on Scipio Africanus, is pertinent to the political leadership of the *res publica*; the second, on the effects of public speeches in the lead up to the Battle of Cannae, concerns the rôle of oratory in Roman politics. It will be argued that both of these cases reflect problems that were more familiar to the Romans of the late Republic, and Livy's contemporaries, but are less common in his account of Roman history in Books 21-45.

#### **4.1 Scipio Africanus' problematic greatness**

In Walsh's opinion, P. Scipio Africanus 'undoubtedly approaches nearest to Livy's ideal Roman.'<sup>437</sup> There is no denying Africanus' place among the foremost of Livy's Roman heroes, both for his achievements in the service of his *patria*, and for his many outstanding virtues. As the conqueror of Hannibal, the greatest threat to the Romans after the Gauls who sacked the city, Scipio ranks not only among the *imperatores* credited with ending a great war, but stands alongside Camillus as the saviour of Rome. His ability as a general is unmatched in Books 21-45 – indeed, it is acknowledged even by his enemy Hannibal.<sup>438</sup> And it is not just his personal courage

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<sup>437</sup> Walsh 1961: 93; he repeats the sentiment in the introduction to his commentary on Book 38 (1993: 5).

<sup>438</sup> In the famous exchange between Hannibal and Scipio on the eve of the Battle of Zama: 30.30.4, 12-14. In his prologue to this exchange Livy calls the two men 'not only the greatest generals of their own age, but the equals of any kings or commanders of all races, in all previous memory' (30.30.1:



and his skill as a strategist and tactician that mark him out as perhaps the greatest soldier in the extant books of the *AUC*.<sup>439</sup> Livy imbues him with a range of qualities that enhance his leadership: *pietas* towards gods,<sup>440</sup> fatherland, and family,<sup>441</sup> *clementia* and *benignitas*,<sup>442</sup> *disciplina*,<sup>443</sup> *comitas*,<sup>444</sup> charisma, and self-confidence.<sup>445</sup> Many of these virtues are directly opposed to the characteristics of Hannibal's leadership. Indeed, some scholars have argued that Livy's Scipio is the antithesis of his Hannibal, the former embodying Roman virtues, the latter Punic vices; by pitting the two generals against one another, this historian creates a contest between the two sets of national characteristics that the generals instantiate.<sup>446</sup> It is easy to exaggerate this antithesis, however: the Roman and the Carthaginian share many traits, and in many ways their lives follow similar courses.<sup>447</sup> Nevertheless, as

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*non suae modo aetatis maximi duces, sed omnis ante se memoriae omnium gentium cuilibet regum imperatorumue pares).*

<sup>439</sup> Even before Scipio takes command of an army his *uirtus* is highlighted: it is on display in his first appearance in the *AUC*, when he rescues his father at the Battle of the Ticinus (21.46.7-8), and stands out again when despite his youth he volunteers to assume command of his father and uncle's armies in Hispania (26.18.6-7), when it seemed that 'matters were so desperate and the state so hopeless that nobody dared to take command in Hispania' (*adeo perditas res desperatumque de re publica esse ut nemo audeat in Hispaniam imperium accipere*). Scipio's ability as a strategist is amply demonstrated by his campaigns in Hispania and Africa (described in Books 26-8 and 29-30 respectively), his ability as a tactician by such set piece battles as Baecula (27.18) and Zama (30.32.11-35.9).

<sup>440</sup> Livy stresses Scipio's traditional religious piety by e.g. having him pray in archaic language before setting out for Africa (29.27.1-4) and again upon sighting his destination (29.27.9), and by remarking his conscientiousness about his duties as a *Salus* (37.33.7); Walsh 1961: 94-5 argues plausibly that this is intended to balance the superstitious elements of the tradition surrounding Scipio.

<sup>441</sup> Scipio's dedication to his *patria* is revealed in the aftermath of the Battle of Cannae, when he forces the other young *nobiles* at sword-point to swear not to abandon Rome: 22.53.6-13; Walsh 1961: 96. Livy conflates Scipio's *pietas* towards his fatherland with his *pietas* towards his family, beginning with the young man's rescue of the consul/his father at the Ticinus (21.46.7-8); see Jaeger 1997: 140-1; Rossi 2004: 364-6. Later, Scipio assumes command of the armies in Hispania that his dead father and uncle had led, and in his introductory speech to them (26.41.3-25) he emphasises his familial connection with these soldiers, combining his service to the state with the duty he owes as a son and nephew; see Rossi 2004: 364-6. On the idea of the *patria* as parent in Roman thought, see Stevenson 1992, esp. 429-31.

<sup>442</sup> E.g. Scipio's treatment of the Spanish hostages (26.49.8-16); of Allucius and his bride (26.50); of Masinissa's nephew Massiva (27.19.8-12); of the mutinous Indibilis and Mandonius (28.34.3-11). See Walsh 1961: 74, 97; Rossi 2004: 346.

<sup>443</sup> N.B. Scipio's stern treatment of the ringleaders of the mutiny that took place during his illness in Hispania (28.29.7-12), which contrasts with his *clementia* towards foreign enemies.

<sup>444</sup> E.g. Scipio's personal embassy to King Syphax, where his geniality wins over both the king and Hasdrubal: 28.18.6; Walsh 1961: 97.

<sup>445</sup> Scipio's self-confidence is evident early on, from the boldness with which he submits his candidacy first for the curule aedilate (25.2.6-7) and later for the Spanish command (26.18.7, with 26.19.1-2), in spite of his youth; cf. Walsh 1961: 96-7. The popular enthusiasm with which he is received on both occasions reflects (25.2.7; 26.18.8-9, with 26.19.2) his charisma; so, for instance, does the ease with which he leads the people away from the Petillii's *contio* (38.51.6-14).

<sup>446</sup> See Burck 1971: 33-4; Rossi 2004: 367-75.

<sup>447</sup> Rossi 2004 interprets Livy's accounts of Scipio and Hannibal as 'parallel lives', in which the two characters illuminate one another by means of their similarities and differences. Complementary

the chief architect of Rome's victory in the Second Punic War, Africanus is not only a hero in the *AUC*, but to some extent a personification of the ancient virtues, both martial and more general, that allowed the Romans to defeat their great enemy.

But to say that Scipio comes close to being Livy's ideal Roman is to undervalue the significance of politics in the historian's treatment of Roman leaders. In his eulogy for Scipio, Livy writes that though 'A memorable man, he was however more memorable for the martial than the peaceful arts' (38.53.9: *uir memorabilis, bellicis tamen quam pacis artibus memorabilior*), and goes on to contrast the great feats of his early life with the less impressive deeds of his mature years (38.53.9-10). Walsh approves, slightly missing Livy's point, which is about the relative *gloria* of Livy's earlier and later *honores* and conquests, when he declares that 'Livy has no illusions, nor does he seek to delude us, about Scipio's stature as a politician'.<sup>448</sup> But Livy does not merely depict Africanus as a forgettable politician, but portrays him as a problematic figure in Roman politics. Scipio's place in the Roman polity and his relations with its leadership are far from ideal, and as a statesman he falls short of other characters in the *AUC* such as Fabius Maximus Verrucosus and Ti. Sempronius Gracchus. In fact, as the following analysis of Livy's portrayal of Scipio will show, although his career as a war leader exemplifies the highest virtues, his rôle in domestic politics is more admonitory than exemplary.

The negative aspects of Livy's depiction of Africanus as a political figure are especially striking in view of the historian's partiality for the man. That Livy favoured Scipio is apparent from his first appearance.<sup>449</sup> The historian mentions that at the Battle of the Ticinus the consul P. Cornelius Scipio was saved by his son, whom he identifies as the future conqueror of Hannibal (21.46.7-8). Livy goes on to note that Coelius Antipater gave a different account, in which the consul was rescued by a Ligurian slave, but explains that he has credited the young Scipio with the feat not only because that is the traditional version, recounted by most of his sources, but also because 'Truly, *I should prefer* it were true of the son' (21.46.10: *malim equidem de filio uerum esse, quod et plures tradidere auctores et fama obtinuit*). The partiality

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biographical accounts of this sort feature elsewhere in the *AUC*, e.g. the stories of Manlius and Camillus in Books 5-6: Jaeger 1997: 57-93.

<sup>448</sup> Walsh 1961: 100. Cf. Walsh's more critical assessment of Livy's obituary of Scipio in his commentary (1993: 5).

<sup>449</sup> Walsh 1961: 93.

Livy admits here is apparent from this point on, in the attention he pays to minor events in Scipio's early career,<sup>450</sup> and in the space he dedicates to discussing Scipio's legend and character even before the man begins to feature prominently in the narrative, in anticipation of rôle he will assume in Roman history.<sup>451</sup> The historian also discounts some invidious traditions about him. For example, to counter any suspicion that Scipio aspired to *regnum*, Livy makes him reject his acclamation as king by Spanish captives whom he spared, altering and correcting the Polybian version of this event to bring it within the limits of Roman tolerance.<sup>452</sup> Later, the historian prioritises a version of the trial of L. Scipio Asiaticus that preserves Africanus' reputation over a version (38.56.8-13) that does not. Yet Livy's partiality for Scipio does not prevent him from depicting the great man as a source of *discordia*. Indeed, Livy's account of Scipio's career ends in the serious discord provoked by his 'trial', and that discord lingers even after Scipio's death, manifesting again in the trial of his brother Lucius.

After the tremendous benefits Africanus has conferred on the Roman polity, it is a cruel reversal of fortune that his tale should end in political upheaval. This reversal is not altogether unexpected, however. The following appraisal of Scipio's political career reveals that Livy foreshadows the *discordia* in which Scipio's career will end. It will be argued that this *discordia* is the consequence of traits that Scipio shares with the other troublemakers in Books 21-45. He possesses a high degree of self-regard that breeds in him *ambitio* and a disdain for *consensus patrum* and the *auctoritas* of the magistrates – the hallmarks of political troublemakers and the source of much domestic distress, as the previous chapter showed. Scipio is no *seditionis*, of course, for his actions are not motivated by the same level of self-interest that drives the worst offenders in the *AUC* – at least, not until the end. Furthermore, his many

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<sup>450</sup> Scipio's rescue of his father (21.46.7-8); his rallying of the young *nobiles* after Cannae (22.53.6-13); his election to the curule aedilate (25.2.6-7).

<sup>451</sup> N.B. Livy's discussion of Scipio's self-representation at 26.19.3-9, immediately after Scipio takes the Spanish command upon himself. Livy also anticipates Scipio's destiny in each of the character's early appearances: 21.46.8: *hic erit iuuenis penes quem perfecti huiusce belli laus est, Africanus ob egregiam uictoriam de Hannibale Poenisque appellatus* ('This will be the youth, called Africanus on account of his remarkable victory over Hannibal and the Phoenicians, to whom the fame of ending this war belonged'). This comment follows Scipio's rescue of his wounded father from Hannibal, an act that also anticipates the service Scipio will render to his fatherland: Jaeger 1997: 138-40); 22.53.6: *Scipio iuuenis, fatalis dux huiusce belli* ('the youth Scipio, the destined general of this war'); 25.2.6: *P. Cornelius Scipio, cui post Africano fuit cognomen* ('P. Cornelius Scipio, whose *cognomen* afterwards was Africanus').

<sup>452</sup> Livy 27.19.3-6; Polyb. 10.40.2-9; see Walsh 1961: 97-8; Levene 2010: 157-9.

virtues and his services to Rome distinguish him from most of the figures who cause conflict or disrupt public affairs in Books 21-45.<sup>453</sup> His positive traits more than compensate for his negative ones, but still, in the domestic sphere Africanus is an ambiguous character, far less villainous than most of the figures who provoke *discordia*, and at the same time less salutary than some other political leaders in these books.<sup>454</sup> This section considers the reasons for this ambiguity, and its implications for understanding the wider scheme of Livy's history.

#### 4.1.1 Scipio the politician

By the time P. Scipio enters politics, at 25.2.6-7, he has appeared twice before, and in very favourable circumstances. His rescue of his father the consul at the Ticinus and the way he forced the mutinous young *nobiles* to swear their loyalty to Rome after Cannae show Scipio to be a youth of unusual *uirtus*, dedication to his country, self-assurance, and initiative. He has the makings of a leader, and when he submits himself as a candidate for the curule aedilate despite his youth he demonstrates his desire to be a leader too.

Because of his youth, however, the tribunes try to obstruct him (25.2.6), but Scipio simply asserts that if the Quirites are unanimous in their desire to make him aedile then he is mature enough for the office (25.2.7). The young man elicits such enthusiasm, *tantus fauor*, from the voters that the tribunes desist. On the face of it this episode is innocent enough, but on closer inspection something troubling appears. As the previous chapters showed, upholding traditional constraints on who could stand for high office was one of the functions the tribunate regularly performs in the *AUC*. At 32.7.8-10, for instance, the tribunes M. Fulvius and M'. Curius challenge T. Quinctius Flaminius' candidacy for the consulate on the grounds that he is too young to stand. After a debate on the Campus the tribunes and the candidate evidently refer the matter to the senate, and the senate decides that the people should be allowed to elect any man they wish provided his candidacy is not illegal (32.7.11). The tribunes

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<sup>453</sup> Of course, there are characters in early part of Livy's history who go from being valuable warriors, who contribute to Roman power and security, to threatening the *res publica*, N.B. C. Marcius Coriolanus in Book 2 and M. Manlius Capitolinus in Books 5-6.

<sup>454</sup> This is not to say that Scipio's activities outside of Rome are unproblematic. His command in Sicily is associated with accusations of serious misconduct and indiscipline, the truth of which Livy leaves to his reader's judgement. Livy does not clear Scipio of the charges of allowing himself and his army to succumb to Hellenic luxury in Syracuse, nor does his depiction of Scipio's rôle in the Locrian affair entirely exculpate the general: see Levene 2010: 235; *contra* Rossi 2004: 372-3.

bow to *auctoritas patrum* (32.7.12). This pattern of events is repeated in many cases of non-traditional candidacy in Books 21-45, as the preceding chapters showed, but Scipio's case is markedly different. For instead of withdrawing their objections on the advice and authority of the senate, as they do in Flaminius' case and others, at 25.2.7 the obstructing tribunes bow to the popular pressure excited by the candidate himself.

This episode establishes a pattern of political behaviour that recurs in Livy's account of Scipio's life. It reveals Scipio as ambitious for *honores*, but in this regard he is no different from other Romans except in his comparative youth. What is more striking is his ability to realise his ambition. Whereas other atypical candidates require the sanction of the senate to get past the tribunes' obstruction, Scipio is able to make the tribunes yield through force of will and the popular *fauor* he arouses with apparent ease. The only candidate who manages a comparable feat in Books 21-45 is Scipio's eventual opponent Q. Fabius Maximus. The two candidates could not be less alike, however. When he is elected to a second consecutive consulate at 24.7.12-9.4, Fabius is already the most prominent man in Rome, a proven general, thrice consul and twice dictator, and enjoys the additional advantage of being the consul in charge of the election. Scipio, by contrast, is a mere *iuuenis* and a *privatus*. Yet Scipio manages what Fabius does, and Livy does not even resort to apologetics as he did in Fabius' case. His election to the aedilate therefore shows that Scipio is not only ambitious, but sufficiently self-assured and charismatic to achieve his goal over the objections of the tribunes, and even without the approval of the senate. And this last point is worrying, because it reveals Scipio as someone who is not only willing to disregard *mos maiorum* to achieve his aims, but is willing to do so even without the support of the sacred body of the ruling élite.

Scipio's confidence, ambition, and charisma are on display at the next step in his political career, when he alone, at the age of twenty-four, has the courage to volunteer himself to take command of the armies of his recently slain father and uncle in Hispania (26.18.7). Livy stresses that the apparent hopelessness of the situation after the Scipiones' deaths deterred the leading men of the state from offering to take command (26.18.6). Small wonder, then, that the audacity of the *iuuenis*, who volunteers for the task when none of the *principes* dared to, captures the assembly's

attention and gains their immediate approval.<sup>455</sup> Their *fauor* secured, the assembly grants Scipio the Spanish command, and the extent of the young man's popularity is manifested by the fact that he wins the vote not only with the unanimous support of the *centuriae*, but the unanimous support of every individual voter (26.18.9)! Understandably, when people's 'impulsiveness and eagerness', *impetus animorum ardorque*, subsides, they become rather concerned at this remarkable turn of events, wondering whether their *fauor* had overcome their reason (26.18.10). But again Scipio's extraordinary charisma wins the Romans over. By the time he has finished addressing the *contio* he has called (26.19.1-2) he has rekindled his people's ardour for him, and 'filled men with more confident hope than trust in a human's promise or reasoning based on assurance in such matters normally inspired' (*impleret homines certioris spei quam quantam fides promissi humani aut ratio ex fiducia rerum subicere solet*). (It is at this point that Livy discourses on Scipio's use of religion to inspire awe and hence make the public more amenable to him: 26.19.3-9.)<sup>456</sup> So once again Scipio's comfortable self-assurance and his ability to evoke *fauor* allow him to circumvent custom and secure *honor* ahead of time.

Fortunately for the *res publica*, the people's unreasonable confidence in Scipio is not misplaced. His brilliant successes in Hispania, summarised at 28.28.1-3, win him even greater *fauor*, and this popularity secures another unanimous decision by an assembly – this time, at the consular elections.<sup>457</sup> But during Scipio's first consulate the underlying problems with his political conduct come to the fore, in his dealings with the senate. The source of the *discordia* that develops between the consul and the *patres* is Scipio's characteristic *ambitio*, in this instance his desire to take the war to Africa. The Roman people are already convinced that Scipio is the man to end the war, and that he ought to have Africa as his province (28.28.9-10). Scipio himself embraces this *fama*, that he was to be assigned Africa rather than having to cast lots for it: he starts to assert that he had been elected to end the war by taking it to Africa (28.40.1-2). Livy highlights the *ambitio* that motivates Scipio by describing him as 'not satisfied with moderate glory', *nulla iam modica gloria contentus* (28.40.1). The

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<sup>455</sup> 26.18.8: *in quem postquam omnium ora conuersa sunt, clamore ac fauore ominati extemplo sunt felix faustumque imperium* ('on [Scipio] everyone's faces were turned, and they foretold by their noise and approval a fortunate and auspicious command').

<sup>456</sup> On Livy's take on Scipio's conspicuous religiosity, see Walsh 1961: 94-5.

<sup>457</sup> 28.28.6; Livy describes the enthusiasm with which Scipio is received at 28.28.7-8.

audacity of his claiming Africa as his province by right is yet another instance of Scipio's disregard for *mos maiorum*, and he compounds this disregard by declaring openly that he would secure the command he wanted through the *populus* if the senate should oppose him.<sup>458</sup> Thus, his willingness to achieve his goals without the senate's approbation and his reliance on his ability to charm the electorate, hinted at in his previous forays into politics, reach their logical conclusion when he pits the senate against the *populus* in his effort to attain the superior *gloria* of ending the war.

Naturally, the principal senators do not receive Scipio's attempt to usurp their traditional prerogatives in distributing provinces or his demagogic threats warmly. No less a figure than Fabius Maximus leads the opposition to the consul. His speech and Scipio's reply to it (28.40.3-44.13) constitute what is arguably the best-crafted oratorical exchange in Livy's third decade, a confrontation between the two saviours of Rome in the Hannibalic War that illuminates their competing views of the war and their personalities in the process.<sup>459</sup> Yet, for all the effort Livy has put into these speeches, they utterly fail to resolve the conflict.<sup>460</sup> This remarkable fact reveals the extent to which Scipio fails to fulfil his domestic duties as a consul. Instead of offering *consilium* and leading through and with *consensus patrum*, the consul sows *discordia* in the very heart of the state. Scipio's failure as a domestic leader is underlined by the contrast with Fabius, who so conspicuously governed with *consensus patrum* in the first half of the third decade.

The impression that Scipio is not performing as a consul should is reinforced by an observation of Q. Fulvius Flaccus. After Scipio's speech, the *patres* remain hostile to him because of the rumour that he would take the matter to the *populus* if the senate refused his claim to Africa (28.45.1). Fulvius, second only to Fabius Maximus in prestige, demands that Scipio clarify his intentions (28.45.2). The consul demurs, replying disingenuously that he will do what is in the common interest (28.45.3: *respondisset se quod e re publica esset facturum*). Fulvius' response to this affront succinctly captures the unnatural relationship between the consul and the senate. He tells Scipio that he is 'testing' or 'sounding' the senate 'rather than

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<sup>458</sup> 28.40.2: *acturum se id per populum aperte ferret si senatus aduersaretur* ('he openly disclosed that he would bring it about through the people if the senate should oppose him').

<sup>459</sup> On this debate see Chaplin 2000: 92-7.

<sup>460</sup> The oratorical contest over the repeal of the *lex Oppia* (34.2-7) is analogous, since the exchange between Cato and Valerius Tappo on that occasion also fails to produce a resolution, and functions more as an explication of opposing viewpoints and a reflection of the speakers' personalities; see the discussion in the next section (4.2.2).

consulting' it: *prae te feras temptare te magis quam consulere senatum* (28.45.4). To consult the senate, *consulere senatum*, is notionally the first duty of the consul. Thus Fulvius is saying that Scipio is not performing his basic duty, and the echo of Scipio's title in the verb *consulere* suggests that his failure to consult the senate represents his failure to be a proper consul.

So great is the *discordia* that Scipio has caused between himself and the *patres* that the crisis has to be resolved from outside the senate. To defend the integrity and *auctoritas* of the *patres* and to prevent the senate from becoming a mere sounding board for the consul, Fulvius resorts to a drastic course of action. Since, by his willingness to bring the matter before the *populus*, Scipio shows that he has no intention of treating the opinions of the *patres* with due respect, Fulvius will not dignify Scipio with a response when the consul calls upon him to present his *sententia* (28.45.4-5). He therefore appeals to the tribunes of the plebs to come to his defence in the event, and over Scipio's objections the tribunes decree that if the consul does ask the senate to assign provinces, he must abide by its decision (28.45.5-7). Fulvius' strategem works: Scipio agrees to comply with the senate's decision, and finds himself assigned Sicily as his province, with permission to cross over to Africa if he decides it advantageous (28.45.8).

It is hard to overstate how disconcerting the sequence of events at 28.40-5 is in light of Livy's depiction of Scipio hitherto. Just as Scipio's past successes as a general fosters the expectation among the populace that he will succeed in ending the war, so his past successes on the political stage foster the expectation that he will be similarly successful in his consulate. But in fact it is precisely the traits that served Scipio so well in the past that make him a failure as a consul at home. His immoderate *ambitio* and his wilfulness in pursuit of his goals, his reliance on his charisma with the masses and his disregard for traditional political practice, all these lead him to a confrontation with the senate and alienate them from him. Scipio is too singular to be a 'good' politician in the traditional Roman sense, at least up to this point in his career. More worryingly, he shares his most distinctive characteristics as politician with the sort of men typically responsible for political conflict in the *AUC*. The *discordia* that



these traits provoke at the start of Scipio's first consulate foreshadows the more serious *discordia* of his final appearance in the *AUC*.<sup>461</sup>

#### 4.1.2 Scipio on trial

The final act of Scipio's career is his most problematic, both from what it reveals about Scipio as a character and from an interpretative point of view. For historians interested in reconstructing Scipio's last years, Livy's account of the 'Trials of the Scipiones' at the end of Book 38, with its spurious dating and mutually-exclusive alternative versions, has often proved more troublesome than useful.<sup>462</sup> Some literary critics, too, take a dim view of Livy's efforts at 38.50.4-60.10, seeing it as 'the nadir of Livian historiography – the example par excellence of his defective working methods and of his inability to evaluate sensibly the evidence of his sources.'<sup>463</sup> More recently, however, the narrative of the 'Trials' has been read more favourably by scholars more interested in Livy's literary art than in the historicity of the account. Mary Jaeger, for instance, argues that Livy's account of the 'Trials' eschews a simple, linear narrative for sympathetic effect, to let his reader share in the complexity and contradictions of both the historical evidence and of Scipio's behaviour.<sup>464</sup> Similarly, Andreola Rossi sees the two versions of the trials as a reflection of the abiguities of the character of Scipio in the *AUC*.<sup>465</sup> And Ayelet Haimson Lushkov demonstrates how Livy's approach to citation lets him assert control over contradictory source material and over his competitors' accounts of the 'Trials' (especially that of Valerius

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<sup>461</sup> Cf. Rossi 2004: 378-9: 'Scipio's determination to go to the people if the Senate does not accede to his wishes underscores Scipio's potential for subverting the norms that regulate the correct relationship between the *unus* and the state'.

<sup>462</sup> See for instance Scullard's appendix on the 'Trials' (1973: 290-303), which reflects the difficulties of creating a coherent narrative from the convoluted and often contradictory sources. Following the general practice of modern commentators, Scullard 1973: 291 attributes the shortcomings of Livy's account to his use of Valerius Antias, who 'displays his usual disregard for truth in the interests of rhetoric and dramatic effect, but amid his falsifications there are still some details worth preserving'. The bibliography on the 'Trials', historical and literary-critical, is extensive: see Scullard 1973: 290 n. 1 and Briscoe 2008: 171, to which may be added Briscoe's own introductory note and the commentary that follows (2008: 170-208); Walsh 1993: 9-10, 183-95; Haimson Lushkov 2010; and Rich *FRH* 3.352-358.

<sup>463</sup> Luce 1977: 92 (this is not Luce's own view, however). E.g. Frank 1930: 193-4 ('confused in the extreme'); Walsh 1961: 133 ('extraordinary muddle'), 145 ('failure to disentangle fact from fable...bewilderingly confused'); 1993: 9-10 ('a grotesque performance'). Luce's own analysis (1977: 90-104) of Livy's composition of his account of the 'Trials' is more sympathetic to the challenges the historian faced, and more admiring of his 'effort both to search out conflicting versions and to make an attempt at analysis and comparison.'

<sup>464</sup> Jaeger 1997: 161-76.

<sup>465</sup> Rossi 2004: 379-80.

Antias, which he cites at the start of his account: 38.50.5), thereby establishing his *Ab urbe condita* as the all-encompassing master narrative of Roman history.<sup>466</sup> These authors treat Livy's arrangement of material in the last ten chapters of Book 38 as deliberate, rather than seeing it as a reflection of his shortcomings as an historian. The analysis that follows adopts the same approach. It argues that Livy offers his reader two versions of Africanus' final public act not because he lacked confidence in his original decision to follow Antias, but because he wanted to offer his reader two different visions of Scipio.<sup>467</sup> And although Livy's main narrative of Africanus' downfall, at 38.50.4-53.11, is factually incompatible with the alternative narrative he proffers at 38.56.5-57.8, thematically the two accounts are closely intertwined: both serve as uncomfortable conclusions to the troubled history of Scipio's rôle in politics discussed above.

Livy begins his account by foregrounding the *discordia* that the prospect of putting Africanus on trial generated, and he indicates that at the heart of this *discordia* were competing civic principles.

alii non tribunos plebis sed uniuersam ciuitatem, quae id pati posset, incusabant: duas maximas orbis terrarum urbes ingratas uno prope tempore in principes inuentas, Romam ingratiorem, si quidem uicta Carthago uictum Hannibalem in exilium expulisset, Roma uictrix uictorem Africanum expellat. alii neminem unum tantum eminere ciuem debere ut legibus interrogari non possit; nihil tam aequandae libertatis esse quam potentissimum quemque posse dicere causam. quid autem tuto cuiquam, nedum summam rem publicam, permitti, si ratio non sit reddenda (38.50.6-9)?

Some people criticised not the tribunes of the plebs but the whole state for being able to bear this [i.e. putting Africanus on trial]: the two greatest cities in the world were found ungrateful to their leading men at nearly the same time, Rome being the more ungrateful – for whereas conquered Carthage had driven conquered Hannibal into exile, Rome, the conqueror, was driving out conquering Africanus. Other people said that no single citizen should be so eminent that he could not be investigated under the laws, that nothing was so conducive to equal

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<sup>466</sup> Haimson Lushkov 2010.

<sup>467</sup> It is generally agreed that Livy based his account of the 'Trials of the Scipiones' on that of Valerius Antias: see e.g. Klotz 1915: 520-36; Luce 1977: 92-5; Briscoe 2008: 2; Haimson Lushkov 2010: 100; Rich *FRH* 1.302, 3.352-6. However, this is not to say that Livy's main account of the 'Trials' should be attributed in its entirety to Antias, as Peter F45 would have it. It is impossible to determine to what extent Livy has re-worked the Antian material or what parts of the account are Livy's own contributions: see Rich *FRH* 3.352-7, who prefers the safer approach of counting only the material directly attributed to Antias as fragments (*FRH* 25 F49 = 38.50.5; *FRH* 25 F51 = 38.55.5-9). For penetrating discussions of the way Livy used Antias, see Luce 1977: 96-104; Haimson Lushkov 2010: 100-5; Rich *FRH* 1.299-304, 3.352-6.

liberty than that the most powerful man, whoever he was, could be made to plead his case in court. Moreover, what thing – to say nothing of the highest public business – could be entrusted to any man safely, if an account did not have to be given?

This moral dilemma fades from view in the initial exchange between the Petillii and Scipio. The tribunes' charges revolve around the money Scipio received from Antiochus III, but Livy claims the Petillii's case was based less on evidence than on attacking their opponent's character (38.51.1), and this is borne out by the account he gives of their speech: the Petillii revive the old rumours of misconduct in the Locrian affair and at Syracuse (38.51.1), and accuse him of dictatorial and regal conduct in Greece and Asia when he served as his brother's legate (38.51.2-4). Africanus, however, simply refuses to dignify these accusations with a reply. Instead, when called to the Rostra he proclaims his intention to sacrifice in memory of his victory at Zama, and having invited his audience to join him he leads the entire assembly away, breaking up the tribunes' *contio* (38.51.6-14).

It is after this that the dilemma that Livy introduces at 38.50.6-9 comes to the fore in his narrative, forming the basis of the second exchange in the 'trials' of Africanus, between the Petillii and Ti. Sempronius Gracchus. For in causing the hearing to dissolve Scipio appears to confirm the fears of those who supported the trial. After Scipio withdraws to Liternum and asks to be excused from attending the subsequent hearing on account of illness (38.52.1, 3), the indignant Petillii accuse Africanus of undermining tribunician authority and acting as though he were beyond the reach of the law (38.52.4-7). The language Livy attributes to the tribunes evokes a coup d'état.<sup>468</sup> By disrupting the *contio*, they argue, Scipio 'deprived' the Roman people their 'right to speak their minds about him', and thus stripped them of their *libertas* too (38.52.5: *ius sententiae de se dicendae et libertatem ademisset*). The Petillii suggest to their audience that by joining Africanus in his procession from the Forum to up the Capitoline (following the traditional route of a triumph) they had unwittingly participated in a triumph that he was celebrating over them.<sup>469</sup> To emphasise the rebelliousness of this act, they label it a *secessio* – aimed,

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<sup>468</sup> Cf. Walsh 1993: 186, observing that the tribunes' language is redolent of the political conflicts of the late Republic.

<sup>469</sup> 38.52.5: *iis comitatus, uelut captos trahens, triumphum de populo Romano egisset...* ('accompanied by these people [i.e. the members of the *contio*], as through dragging captives along, he celebrated a triumph over the Roman people...').

paradoxically, at undermining the tribunes' power.<sup>470</sup> The Petillii end by once again alluding to the matter of Scipio's conduct in Sicily, contrasting the state's previous willingness to dispatch a commission to investigate and, if necessary, to detain Scipio when he had an army at his disposal with their current inability to bring a private citizen back from Liternum (38.52.7). But the tribunes' case is overcome by Ti. Gracchus' arguments and moral authority, as the discussion of the latter's rôle in the 'trial' above showed (Chapter 2.2.4). Gracchus makes the case that the Roman people risks shaming itself by its ingratitude towards Africanus so forcefully that he not only wins general approval but evidently induces the Petillii to drop their suit (38.52.9-53.8).

In the contest between the gratitude owed to a Roman hero and the need to be able to hold even the greatest citizen to account, the balance appears on first inspection to tip in favour of the former. This is especially fortunate because Livy strongly implies that the view shared by Gracchus and the senate, that the Petillii are motivated by *ambitio* rather than by a desire for justice, is correct.<sup>471</sup> Moreover, in the final chapter of the book Africanus' innocence of the charge of peculation is seemingly confirmed by the absence of any unaccounted wealth among his brother's possessions (38.60.8). Thus, Livy's account of the 'trial' of Africanus and its aftermath shows that the prosecution was spurious, and that letting the great man retire to Liternum, while still shameful in light of his contributions to Rome, was at least less blameworthy than forcing him to go through the humiliation of a trial.

Yet, for all that, Scipio's innocence does not absolve him of misconduct during the *contio*. The actual criminal charge of embezzlement and the attack on Scipio's character may be baseless, but the Petillii's indignation at the way Scipio undermined the legal process is not. And Livy does not try to excuse the great man's behaviour in this regard. He states unequivocally that Africanus went to Liternum 'with the definite intention of not being present to plead his case' (38.52.1: *certo consilio ne ad causam dicendam adesset*), and goes on to explain that Africanus was simply too proud to bring submit himself to a trial. 'His spirit and nature were too

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<sup>470</sup> 38.52.5: *secessionemque eo die in Capitolium a tribunis plebis fecisset* ('and on that day incited a secession from the tribunes of the plebs on the Capitoline'). Paradox: Adam 1982: 193; Walsh 1993: 186; Jaeger 1997: 152; Briscoe 2008: 185.

<sup>471</sup> Gracchus' invidious references to the Petillii implies that he regards them as motivated purely by *ambitio*: see 38.52.11; 38.53.3-4. The senate's opinion is more explicit: 38.53.7.

great, and he was accustomed to too great a fortune,<sup>472</sup> to know how to be a defendant and abase himself to the humility of pleading his case' (38.52.2: *maior animus et natura erat ac maiori fortunae adsuetus quam ut reus esse sciret et summittere se in humilitatem causam dicentium*). By inducing him to resist the tribunes' summons, the loftiness of Scipio's spirit borders on *superbia*, a trait inseparable in the Roman mind from tyranny, and this is precisely how the Petillii interpret it.<sup>473</sup> Gracchus manages to convince his audience and, by extension, the reader, that forcing so revered a figure as Africanus to plead his case before the Rostra after everything he had achieved would be a disgrace to the Roman people (N.B. 38.52.11). But it is significant that it is only Gracchus' defence, augmented by his legal authority as a tribune, that legitimises Scipio's refusal to submit to judgement; the actual narrative of Scipio's action leaves the probity of his behaviour in doubt.

Scipio's last public act according to Livy's main narrative (38.50.4-53.11) conforms to the pattern of dubious political behaviour established in the earlier books. Once again Scipio's self-regard drives him to disregard norms of behaviour, and once again his charisma enables him to get what he wants, this time by winning the people's support for his impromptu sacrificial procession. His characteristic combination of charm and boldness overshadows his opponents' criticisms and unites the state in *concordia* one last time, and as ever this *concordia* centres on Scipio.<sup>474</sup> The extent to which the *concordia* rests on Scipio himself is revealed by its immediate failure and the reversion to *discordia* in his absence. To the extent that it requires the force of Scipio's personality to maintain it, the *concordia* that he creates is illusory; it takes Ti. Gracchus to create a more lasting concord and bring the persecutions of both Scipiones to satisfactory conclusions. Africanus has always justified his exceptionalism by reference to his service to the *res publica*, and he does so again in his speech at 38.51.7-11, but it is Gracchus who succeeds in convincing the tribunes to accept that the conqueror of Hannibal and Antiochus has earned the right to exceptional treatment.<sup>475</sup> Thus, the episode as a whole upholds the objections of those

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<sup>472</sup> Or, 'His spirit and nature were too great, and used to too great a fortune'; it is not clear whether *adsuetus* agrees with *animus* or refers to Scipio himself: Briscoe 2008: 185.

<sup>473</sup> 38.52.4: *ab eadem superbia non uenire ad causam dicendam arguerent qua iudicium et tribunos plebis et contionem reliquisset...* ('they asserted that it was from the same *superbia* that caused him not to come to plead his case as that because of which he abandoned the trial and the tribunes of the plebs and the *contio*...'). On *superbia* as a characteristic of tyrants in Roman invective, see Dunkle 1967: 159 and *passim*.

<sup>474</sup> Jaeger 1997: 147, 150-1.

<sup>475</sup> Jaeger 1997: 153-5.

who see the prosecution as an act of gross ingratitude, who implicitly think Rome's heroes deserved better (38.50.8-9). But because it also shows Scipio behaving in the same problematic way that he always has, Livy's narrative does not invalidate the concerns raised at 38.50.8-9, which are precisely about leading citizens behaving exceptionally. Rather, Scipio's behaviour, at the *contio* and afterwards, reinforces the validity of those concerns.

The main narrative of Africanus' 'trial' is a fitting *dénouement* to his career. The speeches of Gracchus and of Scipio himself memorialise the latter's accomplishments so well that the historian has no need to include a detailed *laudatio* in the obituary he provides at 38.53.9-11. At the same time, however, the accusations of the Petillii recall the invidious rumours that surrounded Scipio, and they themselves instantiate the envy and opposition that Scipio tended to provoke. And Scipio's final act in Rome recalls the ambiguity of his political career, displaying for the final time that irresistible force of personality, that charisma and self-confidence and conspicuous *pietas*, by which he was so often able to bypass the constraints of *mos maiorum*. It is equally fitting that his final act should be provocative and controversial yet defy the simple interpretations usually associated with such acts in the *AUC*.

Furthermore, Livy's introduction of the two opposing perspectives on the merits of prosecuting leading citizens imbues his account of 'Trials of the Scipiones' with special contemporary relevance. The abuse that many of Rome's great men had suffered at the hands of an ungrateful populace was given currency by Cicero, who, following his harassment and exile at the instigation of P. Clodius, presented himself as the newest member of a canon of spurned heroes.<sup>476</sup> Clodius and others would no doubt have replied that even Rome's self-styled saviour had to be held to account for abusing his power on the night when he executed the Catilinarian conspirators, regardless of what Cicero felt the Roman people owed him. And there was a more recent example than Cicero's that made this conflict of civic virtues particularly pressing for Livy and his contemporaries. In the *De domo sua* 63 Cicero claimed that he could have resisted Clodius and his supporters with arms, but instead chose exile over the possibility of a victory that would have resulted in the deaths of citizens or a defeat that would have destroyed the state. His claim drastically exaggerates the level of support he enjoyed in order to present his exile not as a personal defeat but as an

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<sup>476</sup> Cic. *Dom.* 86-8; *Rep.* 1.6.

act of self-sacrifice for the public good. But Cicero's suggestion that a prominent Roman might resort to violence to maintain his *dignitas* was all too plausible to the generation that had lived through the civil wars of the 80s. Sulla had taken up arms to retain his Asian command, and Marius had followed suit, returning to Rome in force to avenge his wounded pride. Catilina, too, had been driven to violence by a perceived affront to his *dignitas* (his repeated rejections in the consular elections), but unlike the successful *imperatores* Marius and Sulla he had little claim to the gratitude and respect of the Roman people. For Livy's generation, however, it was Caesar who made the conflict between the honour owed to Rome's *imperatores* and the limits of individual power in a free state especially pertinent. Although the legitimacy of his conquest of Gaul did not go unchallenged, Caesar's contribution to Roman *imperium* was undeniable. But Livy and his contemporaries – those who survived – had had to live with the legacy of Caesar's reluctance to sacrifice the consulate he felt was he was owed for his achievements: almost two decades of *discordia* and civil bloodshed. In his *Commentarii* Caesar made no effort to hide the fact that he started a civil war in response to defend his *dignitas*, and he associated his desire to protect his *dignitas* with his services to the *res publica*.

hortatur, cuius imperatoris ductu VIII annis rem publicam felicissime gesserint plurimaque proelia secunda fecerint, omnem Galliam Germaniamque pacauerint, ut eius existimationem dignitatemque ab inimicis defendant (Caes. *BCiv.* 1.7.7).<sup>477</sup>

[Caesar] urges [his soldiers] to defend from his enemies the reputation and standing of their *imperator*, under whose leadership they have conducted public business with the utmost fortune these nine years, and fought very many successful battles, and pacified all Gaul and Germania.

For Livy's original audience, then, the problem of balancing the recognition and gratitude merited by Rome's most eminent citizens, and her military leaders in particular, with the accountability on which the *libertas* of the state depended, must have been pressing given its proven potential to provoke the most ruinous *discordia*.

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<sup>477</sup> Cf. *BCiv.* 1.4.4; 1.7.7; 1.8.3; at 1.9.2-3, however, Caesar expresses a more Ciceronian sentiment, claiming that he was willing to bear 'a loss of *honor* with equanimity for the sake of the *res publica*' (*tamen hanc iacturam honoris sui rei publicae causa aequo animo tulisse*), despite his admission that '*dignitas* has always been foremost for him and dearer than life' (*sibi semper primam fuisse dignitatem uitaeque potioem*). But throughout the first book of the *BCiv.* Caesar in fact justifies the war as a defence of his *dignitas*: see Peer 2015: 45-58.

The *AUC* addresses this problem repeatedly. As early as the second book, the public mistreatment of a military hero brings peril as well as shame upon the Roman people. C. Marcius Coriolanus certainly earns the hatred of the plebs for his suggestion that the *patres* use the grain shortage to revoke the concessions made to them and abolish the tribunate (2.34.9-11). Nevertheless, Livy emphasises that for all the anger he provokes Coriolanus is innocent of any crime, yet the tribunes determine to prosecute him regardless (2.35.1-3). The threats of violence Coriolanus utters as he chooses exile over submitting to the people's judgement (2.35.6) would surely have resonated with Livy's early readers.

Other victims of popular ingratitude in the *AUC* make better *exempla*, preferring to sacrifice their *dignitas* rather than doing harm to the *res publica*, as Cicero claimed to have done.<sup>478</sup> Camillus in Book 5 is of course the most famous Roman hero to fall prey to a spurious prosecution arising from his unpopularity. He too goes into exile, but unlike Coriolanus his *pius* devotion to his fatherland never wavers, and despite his loathing for the countrymen who drove him out he returns when summoned and liberates Rome from the Gauls.<sup>479</sup> There is another, rather different *exemplum* in Book 22. Unlike Coriolanus and Camillus, Fabius Maximus is never subjected to the indignity of a prosecution. During the dictatorship in which his policy of *cunctatio* effectively saved Rome from Hannibal in the critical months following the Battle of Lake Trasimennus, Fabius is subjected to a different kind of abuse: *rumor*. The slanders and invectives directed at the dictator will be considered in greater detail in the next section of this chapter; here it will suffice to note that a campaign of calumnious rhetoric succeeds in undermining the *populus'* support for his leadership, and eventually he is forced by plebiscite to accept his *magister equitum*, M. Minucius, as his equal in command of the army. Fabius, however, 'with the same firmness of spirit with which he had borne his enemies defaming him before

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<sup>478</sup> Livy's opinion of Cicero's exile is difficult to gauge. The summary of Livy's account of Cicero's exile (*Per.* 103) is too brief for any conclusions to be drawn from it, and the indirect evidence is not decisive either. On the one hand, Livy used Cicero's post-exilic orations to embellish the speech he put into Camillus' mouth at 5.51-4 (see Gaertner 2008: 39-48) – arguably a positive reflection on Cicero's self-portrayal – and he also appears to have mentioned that Cicero's return was greeted with widespread rejoicing (*Per.* 104.3). On the other hand, in the obituary preserved at Sen. *Suas.* 6.22 Livy included the exile among the misfortunes that Cicero did not, in his opinion, bear like a man (*omnium aduersorum nihil, ut uiro dignum erat, tulit*), so perhaps Livy did not regard Cicero a paragon of forbearance comparable to Camillus and Fabius Maximus Verrucosus.

<sup>479</sup> N.B. Camillus' declaration that he would never have returned had not his *patria* been imperilled: 5.51.1-2.



the masses also bore the raging *populus*' injustice to him' (22.26.6: *ipse, qua grauitate animi criminantes se ad multitudinem inimicos tulerat, eadem et populi in se saeuientis iniuriam tulit*). He returns to his command, and does not hesitate to rescue his rival Minucius from Hannibal a few chapters later. Though he laments his countrymen's mistake in elevating Minucius, like Camillus he puts duty to country above his injured *dignitas*. In fact, Fabius' forbearance is greater than Camillus', because unlike Camillus he never expresses any resentment towards the *populus* for his mistreatment at their hands. Perhaps this is simply to be explained by the relative severity of the two men's ordeals, but Fabius still serves as a positive exemplar of how patriotic Romans should react to injustice.

In Livy's primary narrative Scipio Africanus lives up to the *exempla* set by Camillus and Fabius. By leaving Rome for Liternum to avoid the *inuidia* and *certamina* with tribunes that he foresaw (38.52.1), he sacrifices his *dignitas*, his hard-earned standing in society, to avoid embroiling his city in a protracted cycle of political conflict. Livy does not make as much of Scipio's self-sacrifice as he could have, however, since he also leaves no doubt that Scipio's self-imposed exile is primarily a product of his aversion to humbling himself at a trial (38.52.1-2).<sup>480</sup> Africanus' pride makes him disregard the legal authority of the tribunes, but it is not so great that it drives him to violence against his countrymen, as Coriolanus' pride did.

This point, that Scipio did not put personal *dignitas* above his *patria*, is accentuated by Livy's alternative version of L. Scipio Asiaticus' trial at 38.56.8-13. In this version, Africanus did not die before his brother's trial, nor had he retired to Liternum. Instead he was serving as a *legatus* in Etruria when he learned that Lucius has been convicted (38.56.8). He hastened to Rome where, hearing that his brother has been put in chains, 'he drove back the bailiff from his body and resorted to force/violence against the tribunes restraining him, more in brotherly duty than in a manner befitting a citizen' (38.56.9: *reppulisse a corpore eius uiatorem, et tribunis retinentibus magis pie quam ciuilitate uim fecisse*). The brevity of Livy's account of this act belies the magnitude of Africanus' act somewhat, but the *oratio* attributed to Gracchus that Livy goes on to cite conveys its shocking unlawfulness. Gracchus sees

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<sup>480</sup> Cf. Sen. *Ep.* 86.1-3, which presents Scipio's withdrawal to Liternum as a conscious decision to sacrifice himself for the *libertas* of his *patria*; see Walsh 1993: 186.

Africanus' act for what it is, the overthrow of *tribunicia potestas* and the state itself by a *priuatus*; hence his offer to defend Asiaticus because 'it was a more endurable precedent for both the tribunician power and the *res publica* to be seen to be conquered by a tribune of the plebs than by a private citizen' (38.56.10: *tolerabilioris exempli esse a tribuno plebei potius quam a priuato uictam uideri et tribuniciam potestatem et rem publicam esse*). Gracchus upbraids Africanus for his failure to live up to his own previous standards of behaviour, emphasising the contrast with his recent disregard for civic propriety by mentioning his past refusal of excessive *honores*: he who had once turned down honours and offices better suited to a tyrant than a citizen of a free state had now attacked the *res publica* and the *libertas* symbolised by the tribunate (38.56.11-13).<sup>481</sup> As a(n alternative) final act, Scipio's intervention in his brother's trial mirrors his first act in the *AUC*, but also reflects a sharp decline in his relationship to the *ciuitas*. When he intervened to save his father the consul at the Ticinus, Scipio combined his duty to his family with his duty to the state; now, in contrast, Livy stresses that Scipio's familial *pietas* is in direct opposition to his behaviour as a citizen, *magis pie quam ciuilitur* (38.56.9).<sup>482</sup> In this version of events Africanus puts his family's *dignitas* above the welfare of his *patria*.

That Livy included this version, with its damning portrayal of Africanus, in his history at all is significant, since all the evidence suggests that where Scipio is concerned the author was inclined to treat his subject gently. Admittedly, as an alternative account it has no impact on the exterior narrative in which it is parenthetically embedded – it is not intended to alter the overall impression and final judgement of Africanus. And yet it cannot help but colour the way the reader sees him. By including this story in his history Livy offers his reader two competing visions of Africanus at the end of his political career. In the first, despite his characteristic wilfulness and disregard for the norms of conduct expected of the élite, he ultimately sacrifices his place in Roman society, his *dignitas*, for the good of his country. The second vision elucidates and reiterates this fact by way of contrast: it offers the reader a glimpse at what could have happened had Africanus not subordinated his pride – in this case, familial pride – to his *patria*. As with the alternative account of the elder Scipio's rescue at the Ticinus, Livy prefers to believe

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<sup>481</sup> See Jaeger 1997: 156-7; Rossi 2004: 379.

<sup>482</sup> Cf. Jaeger 1997: 156; Rossi 2004: 379.

the first version of Africanus' departure from politics, but he encourages his reader to imagine a more troubling end to the great man's story. And what is particularly disturbing is that this darker ending is not inconsistent with the image of Scipio as a political actor – strong-willed, self-assured, and careless of *mos maiorum* – that Livy has painted over the course of his narrative: it only requires Scipio to be more *pius* towards his family than to his country. This suggests that a character such as Scipio's, however much it might compel a man to excel as a soldier, to the benefit of Roman *imperium*, might not always benefit the *res publica*.<sup>483</sup>

This vision of violence, acted out in the heart of the Forum by a famous conqueror for the sake of *dignitas*, would have been all too familiar to Livy's original readership. There are other Caesarian echoes in Livy's depiction of Africanus in the 'Trials' narrative that evoke the recent civil wars too: Scipio's demand that the treasury be opened to him and his threat to open it himself when the quaestors refused (38.55.13),<sup>484</sup> the reference to the offer to make him *perpetuus consul et dictator* in Gracchus' speech (38.56.12).<sup>485</sup> These resonances invite the reader to view the two versions of Scipio's downfall, and indeed his whole life, in light of the civil strife that engulfed Rome in the late Republic. The attributes that make Scipio a successful leader, such as his charisma, his self-confidence, and his generalship, were shared by the leaders who did the most harm to the *res publica* when their *dignitas* was threatened. In the main narrative of the *AUC* Scipio avoided this impious fate, but the alternative version the Livy provides suggests that he avoided it only narrowly, perhaps only because he died before his brother was put on trial.

The life of Scipio Africanus in the *AUC* is not only a celebration of his achievements, but a warning about the dangers associated with leaders who achieve particular distinction and *gloria*. Even before the 'Trials' narratives Scipio manifests

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<sup>483</sup> This tension, between the good done by Scipio for the empire and his domestic rôle, is introduced at the start of the 'Trials' narrative with Livy's description of the competing opinions about the prosecution: those who disapprove stress Scipio's conquest and contributions to *imperium* (38.50.6-7), while those who approve focus on the *ciuitas* (38.50.8-9): Jaeger 1997: 146-7. Jaeger 1997: 147-51 argues that Scipio manages to balance and unite the domestic with the imperial/peripheral in his speech and procession, but, as argued above, Scipio's solution is illusory because it depends on his presence.

<sup>484</sup> This anecdote is mentioned by Polybius (23.14.5-6; see Briscoe 2008: 196), so the parallel with Caesar's actions is coincidental, although for Livy's audience it must have evoked the latter.

<sup>485</sup> This reference makes it almost certain that the *oratio scripta* attributed to Gracchus was composed around the time Caesar was made *dictator perpetuus*: see Briscoe 2008: 200-1, with references. When associated with magistracy, the term *perpetuus* had negative connotations because it was antithetical to a fundamental element of Roman *libertas*, the annual change of magistrates: see Oakley 1997: 700 on Livy 6.40.7; cf. 3.19.4; 3.36.9; 3.57.2; 6.41.3; Cic. *Phil.* 1.4; 2.87.

traits that are redolent not only of other characters who disrupt public life at Rome, but of the dynasts who created *discordia* in the century before Livy began to write.<sup>486</sup> Throughout his career Scipio shows a tendency to ignore traditional norms of political behaviour, and a readiness to use his popular appeal to bypass these strictures to satisfy his *ambitio*, regardless of whether the obstacle he faces is the power of the tribunes or the authority of the senate. ‘Scipio’, as Chaplin remarks, ‘represents the direction Rome is taking’, as outstanding martial figures would come to dominate politics in the following years, as they no doubt came to dominate Livy’s history of those years. And by evoking the leaders of the late Republic, Scipio’s violence in the alternative account of his brother’s trial also anticipates the violence to which later Roman generals would resort when their *dignitas* was threatened, and which Livy would go on to recount in his lost books.<sup>487</sup> This glimpse at the dangers that the pride of great men poses to a free *res publica*, dangers that would occupy much of Livy’s later narrative, also highlights the lesson Livy would prefer his reader to learn from Africanus in the main account of his ‘trial’ and exile: that even a man who has been treated unjustly by his countrymen should put the *concordia* and *libertas* of Rome above himself. Unhappily for Rome’s *concordia*, Scipio’s *exemplum* would be all too rarely emulated in the books to come.

## **4.2 Oratory and politics before the Battle of Cannae**

The preceding chapters examined the rôle of oratory in both maintaining and destabilising the Roman political order. This section too considers how oratory creates *discordia* in the *AUC*. But unlike the cases discussed above, in which politically disruptive speech is effectively countered and *concordia* restored, in the series of speeches considered here, from the chapters leading up to the campaign and Battle of Cannae in Book 22, no effective opposition is offered to dangerous and irresponsible oratory. This section explores the implications of Book 22 for the rôle of political oratory in the *AUC* as a whole.

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<sup>486</sup> Cf. Chaplin 2000: 97 n. 56 on the traits shared by Scipio in the ‘Trials’ narratives, 38.50-56, and the ‘dynasts’ of the late Republic.

<sup>487</sup> Chaplin 2000: 96-7; Rossi 2004: 379-80.

#### 4.2.1 Minucius and the Fabian Strategy

After the Roman defeat at Lake Trasumennus, as the discussion in Chapter 2.1 showed, Roman affairs were well managed by the dictator Q. Fabius Maximus. After putting domestic affairs in order, Fabius embarks on a course of action, a deliberate strategy of avoiding pitched battle, with the intention of preserving Rome's manpower and slowly forcing Hannibal out of Italy by a war of attrition. Once Fabius is in the field, Livy quickly establishes that he represents a real threat to Hannibal. The Roman army encamps near Arpi in view of the enemy (22.12.3); Hannibal offers battle but Fabius does not respond, and the Carthaginian himself, in spite of boasting that their refusal to face him shows that the Romans' spirit is broken, privately worries that the Romans finally have a leader who is his equal (22.12.4-5). Hannibal 'indeed feared from the outset the *prudentia* of the new dictator' (*prudentiam quidem dictatoris extemplo timuit*), so he tries to provoke Fabius into battle by laying waste to allied territory (22.12.6-7). The dictator, however, cannot be tempted. Keeping to the heights, he shadows the Carthaginians' movements, refusing to risk all in open battle, but by means of small skirmishes undertaken in safe circumstances he slowly begins to restore the morale of his soldiers (22.12.8-10). Livy's depiction of the 'Fabian strategy' leaves no room for doubt about its effectiveness, not least because it so troubles the cunning Hannibal himself.

But it also troubles Fabius' *magister equitum* M. Minucius Rufus, and it is he who first expresses opposition to the dictator's handling of the invaders. From the outset Livy highlights Minucius' propensity for unbridled and unwise speech, introducing him as 'Savage and hasty in his opinions, and unrestrained in his language/in respect of his tongue' (22.12.11: *ferox rapidusque consiliis ac lingua immodicus*).<sup>488</sup> With growing boldness Minucius speaks out against his general's tactics, perversely misrepresenting the positive aspects of Fabius' command in order to undermine confidence in them:

primo inter paucos, dein propalam in uolgos, pro cunctatore segnem,  
pro cauto timidum, adfingens uicina uirtutibus uitia, compellabat,  
premendoque superiorem...sese extollebat (22.12.12).<sup>489</sup>

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<sup>488</sup> The depiction of Minucius that follows reflects multivalence of *lingua*, as he is as immoderate in his tendency to disparage his dictator verbally as he is in the language he uses to do so.

<sup>489</sup> Minucius' accusations of timidity and idleness here and in his speech at 22.14 may well reflect genuine contemporary concerns about the Fabian strategy. In the martial society of the middle

first among a few people, thereafter brazenly before a crowd, he abused [Fabius] as lazy rather than holding back, scared instead of cautious, falsely imputing proximate vices for [his] virtues, and by demeaning his superior...he exulted himself.

Livy's description of the grumblings of Minucius is the first in an extended sequence of episodes, spread at intervals throughout chapters 12-38, in which speech is used to malign Fabius Maximus and undermine Roman faith in his leadership. In Chapter 2.3.1 of this thesis it was explained that these speech-acts are Livy's way of representing an historical tradition about the opposition that Fabius faced over his strategy, a tradition that was probably most familiar in Livy's lifetime from Ennius' *Annales* (363-5 Sk). Livy alludes to the poet's renowned lines at the very start of this sequence with the word *cunctatore* and with his use of the distinctive ablative gerund *premendo* at 22.12.12, and he maintains this allusive relationship with comparable echoes of Ennian vocabulary in subsequent passages about the opposition to Fabius.<sup>490</sup> But the function of speech in these passages is not simply to represent Ennian *rumores*. The negative language associated with Minucius at 21.12.11-12, in contrast with the positive depiction of Fabius as a civil and military leader that precedes it, makes it obvious which of the characters is the villain and which the hero in this passage and in the narrative that follows. In the closing words of the chapter, however, Livy breaks with his usual practice of allowing his readers to make their own judgements. Instead, by describing Minucius' verbal attack on his commander as 'a most vile practice that has proliferated owing to the unwarranted successes of many men' (22.12.12: *pessima ars nimis prosperis multorum successibus creuit*), he signals to his audience that the *magister equitum*'s is a negative *exemplum*, and one with contemporary relevance.<sup>491</sup>

Minucius is briefly described at 22.12.12 as sowing discontent 'first among a few people, then brazenly before a crowd' (*primo inter paucos, dein propalam in*

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Republic, *uirtus*, the foremost quality of a Roman man, was associated above all with aggressive displays of courage in battle: see McDonnell 2006: 12-71; Levene 2010: 228-9. By Livy's lifetime the concept of *uirtus* had become more multifaceted, and tactical and strategic cleverness more widely appreciated, so he could depict Minucius' criticisms as transparently fallacious. But from a contemporary perspective Fabius' refusal to give battle when the opportunity presented itself would likely have appeared more cowardly than prudent, a failure to meet the standards of *uirtus* expected of a Roman commander and as such grounds for criticism: cf. Roller 2011: 184-5, 188-90. Roller 2011: 193-200 and *passim* identifies a trace of this point of view in Enn. *Ann.* 363-5 Sk., which paradoxically attributes Fabius' *gloria* to his 'delaying' (*cunctando*), a tactic that stands in direct opposition to the aggressive and proactive *uirtus* that was the traditional source of *gloria*.

<sup>490</sup> Elliott 2009: 534 and *passim*.

<sup>491</sup> Thompson and Plaistowe 1896: 85.

*uolgius*). Upon witnessing the devastation of the territories of Falernum and Sinuessa, however, Minucius gives a full oration (22.14.3-14) to some of the soldiers of Fabius' army, and Livy emphasises the dangerous effectiveness of his speech by describing its effects, before relating the speech itself, as 'nearly the start of a *sedition*' (22.14.1: *prope de integro sedition*). But for all that it is presented from the start as seditious, the speech, in *oratio recta*, is eloquent and emotive. Minucius begins by bemoaning the destruction that he and his audience can see from their vantage point.

'spectatum huc' inquit Minucius, 'ad rem fruendam oculis, sociorum caedes et incendia uenimus? nec, si nullius alterius nos ne ciuium quidem horum pudet, quos Sinuessam colonos patres nostri miserunt, ut ab Samnite hoste tuta haec ora esset, quam nunc non uicinus Samnis urit sed Poenus aduena, ab extremis orbis terrarum terminis nostra cunctatione et socordia iam huc progressus? tantum pro! degeneramus a patribus nostris ut praeter quam oram illi Punicas uagari classes dedecus esse imperii sui duxerint, eam nunc plenam hostium Numidarumque ac Maurorum iam factam uideamus? qui modo Saguntum oppugnari indignando non homines tantum sed foedera et deos ciebamus, scandentem moenia Romanae coloniae Hannibalem laeti spectamus. fumus ex incendiis uillarum agrorumque in oculos atque ora uenit; strepunt aures clamoribus plorantium sociorum, saepius nostram quam deorum inuocantium opem; nos hic pecorum modo per aestiuos saltus deuiasque calles exercitum ducimus, conditi nubibus siluisque (22.14.4-8).'

Minucius asked, 'Have we come here for the sight of the slaughter and burning of our allies, as if to something delightful to our eyes? And, if by nothing else, are we not shamed by these citizens, whom our fathers sent as colonists to Sinuessa, to keep safe from the Samnite enemy this coast, which is now being burned not by the neighbouring Samnites but by a foreign Phoenician, come here now from the far ends of the earth through our hesitation and indolence. Are we degenerating so much, alas! from our fathers that we now see this coast, past which they considered it a disgrace to their *imperium* for Punic fleets to cruise, crowded with and in the possession of enemy Numidians and Mauri? We, who only recently, being indignant that Saguntum was besieged, were appealing not just to men but to treaties and gods, are watching happily as Hannibal is scaling the walls of a Roman colony. Smoke from the burning of villas and fields is coming into our eyes and mouths; our ears ring with the cries of lamenting allies, more often calling for our help than the gods'; here we are, leading our army like so many cattle through summer pastures and by remote trails, hidden by clouds and forests.'

This vivid passage expands Livy's account of the ravaging of the Falernian land (22.13.10-14.1, 3) but more importantly in the context of the speech it also heightens

the emotional power of Minucius' complaints. The highly sensory description of the devastation of 'the most pleasant land in Italy' (22.14.1: *amoenissimus Italiae ager*), ostensibly relating what Minucius and his audience are witnessing, allows Livy's audience to experience the horrors too.<sup>492</sup> Livy thus lets his readers share some of Minucius' outrage at Hannibal's depredations on Italian soil, and in so doing affords insight into why his words are so effective at rousing anger at Fabius.

In this section of his diatribe, however, Minucius emphasises collective shame at the army's failure to intervene – note the second person plural verbs and pronouns highlighted in the excerpt above. Indeed, his emotive description of the scene below him is intended to provoke an affirmative answer to his question, '*nec, si nullius alterius nos ne ciuium quidem horum pudet...*?' (22.14.4). He even goes so far as to claim Fabius' *cunctatio* on behalf of the army: (22.14.5: '*nostra cunctatione*'), though of course from Minucius' perspective the term and the strategy it represents is a disgraceful one, as he makes clear by coupling it with *socordia*, indolence.<sup>493</sup> Minucius' argument is clear and simple: that the whole army is tainted by the shame of its general's strategy.

Only when his speech has reached its emotional crescendo at 22.14.8 does Minucius unleash his vitriol on the dictator directly. The attack (22.14.9-13) consists of a series of negative comparisons between Fabius and great Roman generals of the past, each intended to illustrate how far the dictator's leadership has fallen short of that of the *maiores*. Minucius begins with a sarcastic comparison between Fabius and M. Furius Camillus (22.14.9-11): he asks whether the latter, like 'this new Camillus, this unparalleled dictator looked to by us in our afflicted state' (22.14.9: '*hic nouus Camillus, nobis dictator unicus in rebus adfectis quaesitus*'), would have wandered the uplands when Rome was threatened by the Gauls.<sup>494</sup> In the same tone he invokes

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<sup>492</sup> Note the repeated references the senses, to sight ('*spectatum huc*', '*spectamus*'), hearing ('*strepunt aures clamoribus...*'), smell and even taste ('*fumus ex incendiis uillarum agrorumque in oculos atque ora uenit*'). Biggs 2016 points out that the language of the speech echoes the pastoral poetry of Livy's day, only to upend those idyllic associations with images of fire and bloodshed. He argues that scenes of destruction on Italian soil would have been all the more evocative for readers who had lived through the upheavals of the 40s and 30s.

<sup>493</sup> Elliott 2009: 535.

<sup>494</sup> '*unicus*' parodies Ennius' *unus homo*; Elliott 2009: 535; it also echoes the equally sarcastic title by which Catullus (29.11) addresses Caesar, *imperator unice*; Loane 1903: 116. Cf. Minucius' suggestion that Camillus would have had a good view of the Gauls from the Janiculum, a similarly sarcastic allusion to Fabius' policy of keeping to higher ground and monitoring Hannibal: 22.14.11. The sarcasm is intended to make any comparison between the two dictators appear absurd: Elliott 2009: 535.



L. Papirius Cursor, wondering whether he avenged the Caudine Forks by sticking to the heights of Samnium or by attacking Luceria itself, then C. Lutatius Catulus, asking if it was not by swift action that he won victory (22.14.12-13). Thus, Minucius, like many orators in Livy, bolsters his arguments with *exempla* derived from the Roman past. Chaplin points out, however, that Minucius misrepresents his *exempla* in his effort to depict Fabius as unequal to his predecessors.<sup>495</sup> This misreading of the past will have disastrous consequences later, but for the moment, to judge from the soldiers' response to it (22.14.15; see below), it succeeds in diminishing the dictator and his authority. Minucius ends with a what amounts to a summation of the anti-Fabian position: '“Roman power was made by daring and doing, not by these dilatory policies that cowards call cautious”' (22.14.14: '*audendo atque agendo res Romana creuit, non his segnibus consiliis quae timidi cauta uocant*').

The concluding sentence of the chapter, 22.14.15, indicates that this speech is intended as an example of the kind of diatribes that Minucius engaged in on several occasions during the campaign.<sup>496</sup> It also gives a distinct political slant to Minucius' oratory. The speech (and, implicitly, others given by Minucius) is located firmly in a military context by Livy's description of the *magister equitum* speaking before the cavalrymen and tribunes of the army, and of his words circulating among the common soldiers too.<sup>497</sup> Minucius is described addressing the troops with a participle form of *contionari*, meaning to hold or speak to a *contio* (*contionanti Minucio*),<sup>498</sup> but although *contio* and its cognates had strong associations with domestic political meetings in first-century writers, it is also regularly used by Livy to describe assemblies of soldiers.<sup>499</sup> The conclusion of the sentence, however, activates political connotations of *contionanti Minucio* by attaching a hypothetical political effect to his oratory, for 'if the matter had rested on soldiers' votes, they showed without doubt that they would prefer Minucius to their general Fabius' (*ac si militaris suffragii res esset, haud dubie ferebant Minucium Fabio duci praelaturos*). This political turn is

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<sup>495</sup> Chaplin 2000: 115, noting that neither Camillus nor Papirius acts with the aggression and haste that Minucius imputes to them.

<sup>496</sup> N.B. 22.14.15: *haec uelut contionanti Minucio circumfundebatur...multitudo: haec* together with the imperfect verb suggesting that Minucius spoke like this repeatedly.

<sup>497</sup> 22.14.15: *circumfundebatur tribunorum equitumque Romanorum multitudo, et ad aures quoque militum dicta ferocia euoluebantur...* ('with a crowd of tribunes and Roman equites flocking round, and his vicious words would be disclosed to the ears of the soldiers too...')[.]

<sup>498</sup> Thompson and Plaistowe 1896: 87; Dimsdale 1959: 113.

<sup>499</sup> E.g. 21.53.6; 22.30.6; 23.14.3, 10; 24.16.7; 25.38.1; 26.41.3; 26.43.2, etc. On military *contiones* during the Republic, see Pina Polo 1989: 199-218; 1995: 213-15.

not entirely unexpected, however. As mentioned, at 22.14.1 Livy introduces the speech by calling to mind *seditio*, a term that unambiguously denotes political upheaval, and recalls episodes in the earlier books of the *AUC* that are often incited by mass oratory. 22.14.1 and 15 thus constitute a kind of thematic ring composition, introducing and concluding the *magister equitum*'s speech with suggestions of dire political consequences that foreshadow what is to come later in the book.

The speech itself also has a political undercurrent, which derives from its use of a rhetorical tactic familiar from late Republican political invective. In the first century a fairly common way of attacking individual *nobiles* or the *nobilitas* as a whole was to suggest that the target of the invective had failed to live up to the standards of their illustrious ancestors.<sup>500</sup> The argument is of course connected to the apparently ubiquitous sense among the Romans that the present represented a decline from a more glorious and moral past, but it draws its particular strength from the concept of *nobilitas* itself.<sup>501</sup> The hereditary principle on which the nobility's claims to leadership were based was widely accepted: it was assumed that a given generation of a family would be much like previous generations in ability, indeed even in temperament. That this was manifestly not always the case does not appear to have damaged Roman faith in the principle of hereditary nobility, but it did give those outside the *nobilitas* a powerful rhetorical weapon against socially superior opponents.<sup>502</sup> It is hardly surprising, then, that the late Republic's most famous *nouus homo* deploys this device on both his own and other new men's behalf.<sup>503</sup> But the rhetorical use of the idea of a corrupt and degenerate *nobilitas* was not unique to Cicero, as a number of orations in Sallust's works show.<sup>504</sup> Minucius' attack on Fabius is not an attack on the dictator's *nobilitas*, but it nevertheless draws much of its force from this rhetorical trope. Minucius invokes the *patres* repeatedly in order to accentuate the shame of *cunctatio*, specifically framing the failure to challenge the Carthaginians as a sign of the decline of Roman manhood at 22.14.6: *tantum pro! degeneramus a patribus nostris* etc. His presentation of Fabius as a failure compared

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<sup>500</sup> Morstein-Marx 2013: 43.

<sup>501</sup> Yakobson 2014: 299-300.

<sup>502</sup> Cf. Yakobson 2014: 293-6, on how Marius in Sall. *Iug.* 85 turns the inherited military prestige of the *nobiles*, undermined by recent setbacks in the war with Jugurtha, against them, without rejecting the principle of nobility.

<sup>503</sup> Cic. *Mur.* 16; *Pis.* 1-2; *Verr.* 2.5.180-2; cf. the comment attributed to Labienus in Cic. *Rab. perd.* 20.

<sup>504</sup> Sall. *Iug.* 85.4, 10-25, 29-30, 37-43; *Hist.* 1.55.3; 1.77.6-7 Maur.

to the generals of previous generations plays on the same concept. This rhetorical tactic gives Minucius' words a political tone that complements the hints, in the narrative that situates the speech (22.14.1 and 15), that this should be read as a political oration despite its martial setting.

#### 4.2.2 Orations against Fabius Maximus

In the chapters that follow Minucius' diatribe there is only a single reference to him speaking in public again, when L. Hostilius Mancinus is described as one of a 'crowd of youths who listened often to the *magister equitum* addressing *contiones* furiously' (22.15.5: *turba iuuenum audientium saepe ferociter contionantem magistrum equitum*). But once again the phrasing indicates that Minucius should be thought of as making his tirades repeatedly, and again the participle *contionans* invites a political reading of his speeches. The short episode in which this reference appears (22.15.4-10) also gives a clear indication of the pernicious effects of Minucius' oratory, as Mancinus, 'his spirit seized by violence, and the instructions of the dictator forgotten' (22.15.6: *occupatus certamine est animus excideruntque praecepta dictatoris*), leads his cavalry against a force of Numidians, and to their deaths. Yet in spite of this ominous event, Fabius' *cunctatio* earns the contempt of both soldiers and civilians, especially after his *magister equitum* wins a narrow victory while he is absent.<sup>505</sup>

Reports of Minucius' victory generate a flurry of political activity 'both in the senate and in *contione*' (22.25.1: *de iis rebus persaepe et in senatu et in contione actum est*), and in the chapters that follow (22.25-6) oratory in both venues plays a pivotal part. The dictator's less than enthusiastic reaction to the news provokes a speech from the tribune of plebs M. Metilius (22.25.3-11). Related in *oratio obliqua*, Metilius' oration is less detailed and less eloquent than that of Minucius at 22.14.3-14, and the accusations it levels against the dictator are even more inflammatory. It is also more overtly political than Minucius' speech: like the earlier oration, it employs rhetorical tactics that echo late Republican invective, but in this case they are used to

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<sup>505</sup> 22.23.3: [*cunctatio Fabi*] *contempta erat inter ciues armatos pariter togatosque utique postquam absente eo temeritate magistri equitum laeto uerius dixerim quam prospero euentu pugnatum fuerat* ('[Fabius' delaying'] was despised by soldiers and civilians equally, especially afterwards when, in his absence, there had been fighting due to the *magister equitum*'s recklessness with an outcome I should more truthfully call happy than fortunate'). Livy minimises the scale of the Roman victory, and explains that its scale was exaggerated at Rome by *<uana> fama* and by *uaniore litterae* sent by Minucius (22.24; cf. 22.23.3). As at 22.12.5-6, Livy emphasises the effectiveness of Fabius' tactics, and the obtuseness of his countrymen's response to it, by pointing out Hannibal's worries and his recognition of the dictator's ability: 22.23.2-3; cf. 22.24.3.

attack Fabius on political as well as military grounds. Metilius accuses Fabius of deliberately prolonging the war in order to retain his dictatorial powers:

non praesentem solum dictatorem obstitisse rei bene gerendae sed absentem etiam gestae obstare, et in ducendo bello sedulo tempus terere quo diutius in magistratu sit solusque et Romae et in exercitu imperium habeat (22.25.4).

the dictator had not only stood in the way of things being done properly when he was present, but even when something was accomplished with him absent he stood in the way; and he was wasting time in intentionally prolonging the war so as to remain in office longer and to hold *imperium* alone both at Roman and in the army.

Like Minucius, Metilius misrepresents the dictator's strategy in his effort to discredit not only the strategy but the dictator himself. Metilius' explanation of *cunctatio* differs from that of Minucius, however: the latter implies that *cunctatio* is a consequence of flaws in Fabius' character, of his personal lack of *uirtus*, by contrasting him with the generals of the past; Metilius, on the other hand, represents *cunctatio* as a deliberate attempt to monopolise power. Accusing an opponent of abusing the powers of his office or of illegally accumulating power was a common tactic in late Republican political oratory, and in its most extreme form this tactic manifests as accusations of aspiring to *regnum/dominatio/tyrannis*, aspiring to kingship or tyranny.<sup>506</sup> The favourable portrayal of Fabius in the preceding chapters makes the charge ridiculous, of course, and Livy underlines the falsehood and the foolishness of Metilius' accusations by having him fall prey to one of Hannibal's deceptions. Earlier, at 22.23.4, Livy mentions that the Carthaginian ordered his troops to spare the dictator's lands, in a deliberate and evidently successful effort to undermine Roman confidence in him. Metilius does not go so far as to accuse Fabius of collaborating with the enemy, as Hannibal had hoped, but he does say that the dictator used the legions of the Roman people to protect his own estate at the expense of Campania, Cales and Falerii.<sup>507</sup> The tribune's arguments against Fabius are therefore patently false, but his suggestion that the dictator is abusing his position *quo diutius in magistratu sit solusque et Romae et in exercitu imperium habeat*, with its echoes

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<sup>506</sup> On accusations of tyranny during the Republic, see Wirszubski 1950: 62-4; Earl 1963: 105-6; Dunkle 1967: 151-9; cf. Syme 1939: 152.

<sup>507</sup> 22.25.7: *Campanum Calenumque et Falernum agrum pervastatos esse sedente Casilini dictatore et legionibus populi Romani agrum suum tutante* ('The lands of Campania and Cales and Falerii had been laid waste while the dictator sat around at Casilinum and legions of the Roman people guarded his lands').

of late Republican rhetoric, will have imbued the speech with a degree of verisimilitude. It must have struck readers familiar with the politics and oratory of recent times as exactly the sort of argument that a speaker would deploy against an opponent in Fabius' position.

Metilius concludes his *contio* by proposing that the *magister equitum* be given powers equal to those of the dictator (22.25.10). Fabius for his part 'held himself aloof from the *contiones*', seeing that his cause was most unpopular (22.25.12: *contionibus se abstinuit in actione minime populari*). He does defend his strategy in the senate, however, arguing that, whereas *temeritas* and *inscitia* has brought disaster, with himself in command and subject only to his mind and reason, people will soon learn that with a good general the whims of fortune matter little; he explains that under the current circumstances preserving Rome's forces is in fact more glorious than killing thousands of the enemy (22.25.12-15). Livy, however, prefaces his summary of Fabius' justification by noting that the dictator was received with little enthusiasm by the senate (22.25.12: *ne in senatu quidem satis aequis auribus audiebatur...*). Fabius' words are deprived in advance of any force over their internal audience, so it comes as no surprise when, in conclusion, his *orationes* are described as having no effect (22.25.16: *huius generis orationibus frustra habitis*). The dictator's arguments merely serve to accentuate the collective blindness of the senate and people to the dangers of abandoning the Fabian strategy.

Still refusing to dignify the question of his command in public, the dictator departs from the city the day before the Metilius' *rogatio* is put to the *concilium plebis* (22.25.16). The public attacks on Fabius have evidently had the intended effect, for Livy describes the mood of the *uolgens* as one of silent *invidia* towards the dictator and *fauor* towards his *magister equitum*, but still the assembly does not dare to support the bill openly.<sup>508</sup> One man alone urges the passage of the bill: the previous year's praetor, C. Terentius Varro (22.25.18). In the brief and very negative biography (22.25.18-26.4) that follows Livy presents the *nouus homo* as someone who has made a career out of malicious oratory, who, 'by declaiming on behalf of base men and causes at the expense of the property and reputation of good people, came first to

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<sup>508</sup> 22.25.17: *magis tacita invidia dictatoris fauorque magistri equitum animos uersabat quam satis audebant homines ad suadendum quod uolgo placebat prodire* ('more silent hatred of the dictator and favour toward the *magister equitum* affected [the plebs'] hearts than there were men who dared to come forward to argue for what pleased the rabble').

attention of the people, and thereafter to public offices' (22.26.1-2: *proclamando pro sordidis hominibus causisque aduersus rem et famam bonorum primum in notitiam populi, deinde ad honores peruenit*). Now, with his eyes on a consulate, Varro deploys his skills in an opportunistic attempt to gain popularity by exploiting the widespread antipathy towards the dictator (22.26.3-4). Livy does not relate what Varro said in support of Metilius' bill, but it evidently succeeds in galvanising the plebs into passing it. Thus, over the course of 22.25-6 contional oratory undermines the Romans' trust in Fabius and his strategy, first rousing *invidia* against the dictator and *fauor* towards his second-in-command, then securing the passage of the bill to grant Minucius equal powers. Conversely, Fabius' oratory in the senate fails to win him the support of the *patres*, and so does nothing to stop the challenge to his command in the *concilium plebis*.

Inevitably, Minucius' command is a disaster, and his army is only saved from total defeat by the timely intervention of Fabius (22.27-9). A chastened Minucius publicly acknowledges Fabius' superiority as a general, and leads his men in supplication to the dictator's camp to disavow the powers granted him by Metilius' law (22.29.8-30.6). But although the news of Fabius' victory meets with rejoicing at Rome, the lesson learnt by Minucius is evidently lost on the Roman people, for the Fabian strategy and its author are still a matter of contention at the consular elections later that year. The elections for the consulate of 216 (22.34-35) are the culmination of the anti-Fabian sentiment first articulated by Minucius and then spread by Metilius and Varro at Rome, and as in the previous episodes Livy foregrounds the pernicious rôle of oratory, depicting it as the weapon of choice for Fabius' detractors. Livy also describes the elections as a 'great struggle between the *patres* and the plebs' (22.34.1: *magno certamine patrum ac plebis*), and, as modern readers have noted, the episode is in many ways a throwback to the earlier contests between patricians and plebeians in Books 2-10.<sup>509</sup> The parallels with the 'Struggle of the Orders' have tended to occlude the echoes of later Roman politics and, once again, of late Republican rhetoric in the episode.

The leading candidate for the consulate is C. Terentius Varro, whose popularity among the plebs, Livy reminds the reader, is owed to a career of inflammatory, anti-aristocratic oratory, directed most recently at Q. Fabius Maximus:

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<sup>509</sup> E.g. Gruen 1978: 62.

C. Terentio Varroni, quem sui generis hominem, plebi insectatione principum popularibusque artibus conciliatum, ab Q. Fabi opibus et dictatorio imperio concusso aliena invidia splendentem uolgens extrahere ad consulatum nitebatur (22.34.2) ...<sup>510</sup>

C. Terentius Varro – whom the rabble was endeavouring to elevate to the consulate, having endeared himself to the plebs (he who was one of their own kind) by railing against the leading men and by the demagogic arts – was illustrious through another man's unpopularity on account of the blow dealt to Q. Fabius' position and dictatorial *imperium*...

The dangerous potential of Varro's career as a speaker is recognised by the *patres*, who oppose the man's election lest his success establish a precedent for achieving high office through *insectatio*, his kind of hostile oratory.<sup>511</sup> There immediately follows an example of precisely this type of anti-aristocratic invective, which proves the *patres*' fears justified by contributing to Varro's electoral victory.

Like the words ascribed to M. Metilius at 22.25.3-11, the diatribe in *oratio obliqua* at 22.34.2-11 is evidently intended as a sample of the kind of speeches given by the tribune of plebs Q. Baebius Herennius, Varro's kinsman and apparently a kindred spirit too.<sup>512</sup> And like Metilius' speech, Herennius' employs rhetoric typical of late Republican political invective. But whereas the former uses the familiar accusation of aspiring to tyranny to attack Fabius Maximus alone, the latter draws on a related but subtly different trope to extend its attack to encompass the aristocracy as a whole.

Historians of Roman politics have pointed out that the legitimacy of the senate and of its leading rôle in the *res publica* appear to have been universally accepted in the late Republic; at least, there is little evidence of any anti-senatorial traditions or

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<sup>510</sup> Livy has already noted the popularity that Varro gained through his attack on Fabius at 22.26.4. The phrase *aliena invidia spendentem*, as noted above, is later echoed by the senate's assessment of the Petillii's motives for attacking Scipio Africanus (38.53.7) N.B. Although Livy's opposition of *plebs* and *patres* harks back to his earlier narrative of the 'Struggle of the Orders', it is clear from both his earlier account of Varro's background and his equation here of *plebs* with *uolgens* that Varro is demonised not for being a plebeian as opposed to a patrician, but for being one of the common mob.

<sup>511</sup> 22.34.2: *patres summa ope obstabant ne se insectando sibi aequari adsuescerent homines* ('the *patres* opposed [Varro] with the utmost effort, lest men become accustomed to rising to their ranks by delivering invectives').

<sup>512</sup> The use of the plural *orationes* in relation to Herennius' invective at 22.35.1 (*cum his orationibus accensa plebs esset...*) indicates that he spoke in this way on multiple occasions.

tropes in late Republican rhetoric.<sup>513</sup> There is, however, ample evidence of a tradition of anti-*nobilis* rhetoric.<sup>514</sup> This has already been mentioned in connection with Minucius' suggestion that by failing to engage Hannibal directly Fabius has failed to live up to the standards of the past. Arguing that contemporary *nobiles* fell short of the moral standards and personal accomplishments of their ancestors was one way of attacking their dominance in the political sphere.<sup>515</sup> The argument could be used to discredit individuals, as in the case of L. Calpurnius Piso whom Cicero accused of owing his magistracies to his illustrious name, rather than to any merits of his own:

nam tu cum quaestor es factus, etiam qui te numquam uiderant, tamen illum honorem nomini mandabant tuo. aedilis es factus: Piso est a populo Romano factus, non iste Piso. praetura item maioribus delata est tuis. noti erant illi mortui, te uiuum nondum nouerat quisquam (*Pis.* 2).<sup>516</sup>

For when you were made quaestor, even those who had never seen you nonetheless bestowed that honour on your name. You were elected aedile: a Piso was elected by the Roman people, but not *this* Piso. Then the praetorship was conferred upon your ancestors: those dead men are renowned; nobody yet knew you, the living person.

The same argument could also be directed at the *nobilitas* as a whole, as is often the case in the political orations in Sallust.<sup>517</sup> Marius, in his speech at *Iug.* 85 against the *nobiles* who had opposed his bid for the consulate, attributes their successes to the prestige of their ancestry while drawing invidious comparisons between those ancestors and their degenerate descendants.<sup>518</sup> Conversely, he makes a virtue of his *nouitas*, presenting himself as a true heir to those ancient Romans who, like him, won *nobilitas* for their personal merits and achievements (*Sall. Iug.* 85.4-40). As mentioned above, Cicero also opposes virtuous *nouitas* to *nobilitas* on occasion, albeit

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<sup>513</sup> Meier (1965: 549-68, 593-9, 610-12) points out that there is no sign of any calls for fundamental changes to the traditional powers of the senate: cf. Laser 1997: 158, 165-9, 188-93; Morstein-Marx 2004: 231-2.

<sup>514</sup> Yakobson 2014: 296-300.

<sup>515</sup> Yakobson 2014: 293-5, 299-300.

<sup>516</sup> Cf. *Pis.* 1. See Yakobson 2014: 297.

<sup>517</sup> These speeches need not – probably should not – be imagined to be historical (*contra* Paul 1984: 207, commenting that the speech at *Sall. Iug.* 85 ‘probably represents the substance of Marius’ actual remarks; implicitly accepted by Yakobson 2014) for their content to be treated as a realistic representation of late Republican rhetoric, for Sallust surely intended them to sound plausible to his mid-first century audience; Wiseman 1971: 111 and Evans 1994: 72 both detect echoes of late Republican rhetoric in Marius’ speech at *Iug.* 85.

<sup>518</sup> *Sall. Iug.* 85.4, 10-25, 29-30, 37-43. On the anti-*nobilis* rhetoric of this speech, see Yakobson 2014.



with less venom than Sallust's Marius.<sup>519</sup> This rhetorical tactic had an understandable appeal to *noui homines* seeking to justify their aspiration to the highest *honores*, but Sallust's work suggests that it was not only new men who decried the decline of the nobility. He has the noble Lepidus denounce the eminent scions of the Bruti, Aemilii, and Lutati for overthrowing their ancestors, and then has the equally noble Philippus, after mentioning the good deeds of the Aemilii, denounce Lepidus as a mere bandit.<sup>520</sup> Regardless of their status, then, orators could represent their noble opponents – individually or as a group – as degenerate and a disgrace to their ancestors when they wished to undermine their hereditary claims to power and high office.

An alternative but associated way of doing the same thing was to depict the power of the *nobiles* as tyranny (usually labelled *dominatio* or *regnum*). In the last century of the Republic accusing opponents of aspiring to, or actually exercising, a tyranny was a common rhetorical tactic.<sup>521</sup> As noted above, this rhetoric could be used to defame individual opponents, but it could also be directed at groups, and often the group it was aimed at was composed of *nobiles*.<sup>522</sup> The spectre of a clique or *factio* of *nobiles* dominating the state and monopolising high office is raised by many of Sallust's orators. It is a central theme of the tribune C. Memmius' speech at *Iug.* 31, which presents the Roman state as the ‘ “plaything of a few men's arrogance” ’ (*‘ludibrio...superbiae paucorum’*) in which the spirit of the people, his audience, has been crushed by the ‘resources of a *factio*’ (*‘opes factionis’*).<sup>523</sup> Memmius refers repeatedly to the power of this *factio*, emphasising the unfair monopoly that a few nobles exercise over the wealth and glory of the empire, over the priesthoods, consulates, and triumphs; he depicts the *nobiles* as corrupt and violent, and aspiring

<sup>519</sup> E.g. Cic. *Leg. agr.* 2.1-3, 100; *Mur.* 15-17, 19-30; *Planc.* 17-18, 23-4, 59, 61-2; *Verr.* 2.5.180-2.

<sup>520</sup> Sall. *Hist.* 1.55.3; 1.77.6-7 Maur.

<sup>521</sup> The classic analysis of the specific tropes associated with this practice is Dunkle 1967.

<sup>522</sup> Meier 1965: 594-5; Morstein-Marx 2004: 230-2; 2013: 43; followed by Yakobson 2014: 290, 294.

<sup>523</sup> Sall. *Iug.* 31.1-2: ‘*multa me dehortantur a uobis, Quirites, ni studium rei publicae omnia superet: opes factionis, uostra patientia, ius nullum, ac maxime quod innocentiae plus periculi quam honoris est. nam illa quidem piget dicere, his annis quindecim quam ludibrio fueritis superbiae paucorum, quam foede quamque inulti perierint uostri defensores, ut uobis animus ab ignauia atque socordia corruptus sit*’ (‘Many things discourage me from taking up your cause, Quirites – if zeal for the state did not trump them all – the resources of a *factio*, your forbearance, the absence of justice, and above all that there is more danger in store for uprightness than honour. Indeed it irks one to speak of these things: how for fifteen years you have been the plaything of a few men's arrogance, how your protectors died horribly and unavenged, how your spirit has been ruined by cowardice and idleness’). The idea of a decline from ancestral virtues could be used to shame the plebs as well as the *nobiles*: see also *Iug.* 31.14-17, 20. Cf. Metilius' references to his plebeian audience's pusillanimity: Livy 22.25.10.

to *dominatio*.<sup>524</sup> Similar sentiments are expressed by Marius, by Catilina in the *Bellum Catilinum*, and by Lepidus and Macer in the *Historiae*.<sup>525</sup> Nor was this simply a trope of Sallustian historiography.<sup>526</sup> Caesar, in *Commentarii* intended for circulation in public, claims that he justified his invasion of Italy in a speech to his soldiers by his desire to ‘restore the freedom of himself and the Roman people who had been oppressed by the *factio* of the few’ (*BCiv.* 1.22.5: *ut se et populum Romanum factione paucorum oppressum in libertatem uindicaret*).<sup>527</sup> Caesar’s heir echoed his words closely when, decades later, he publically justified his own use of force against fellow citizens, claiming that he ‘restored the freedom of the *res publica* which was oppressed by the despotism of a *factio*’ (Aug. *RG* 1: *per quem rem publicam [a d]ominatione factionis oppressam in libertatem uindica[ui]*). These two attestations suggest that proclaiming opposition to tyrannical cliques within the élite did have the political currency that Sallust attributes to it. Even Cicero, hardly a vocal critic of the establishment, was not above conjuring the spectre of noble domination when it served his purposes, before a contional audience with whom he appears to have assumed it would carry weight.<sup>528</sup> Thus, orators who set themselves in opposition to the ruling order (or parts of it) could present themselves as enemies not of the senate, but of the corrupt and degenerate *nobiles* who dominated it; indeed, they might even argue that they were defending the senate’s integrity and *auctoritas* from corrupt elements within it.<sup>529</sup>

Many elements of this late Republican rhetoric are present in Livy’s account of Herennius’ invectives against Rome’s leaders. Livy introduces the tribune’s

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<sup>524</sup> *factio*: Sall. *Iug.* 31.1, 4, 15; corruption, misgovernment, and misappropriation of the benefits of empire: 31.9, 12, 19-20, 23-5; monopoly of *honores*: 31.10 violence: 31.1, 7-8, 13; aspiration to *dominatio*: 31.16, 20, 23.

<sup>525</sup> Sall. *Iug.* 85; *Cat.* 20.5-13; *Hist.* 1.55.2-3; 3.48 Maur.

<sup>526</sup> See Syme 1939: 155-6.

<sup>527</sup> The contemporary currency of this rhetoric is also indicated by the author of the *Commentarii de bello Africo* 22.1-2, whose Cato says that when as a young man Cn. Pompeius ‘perceived that the state was oppressed by impious and wicked citizens’ he ‘restored freedom to Italy and the city of Rome’ (‘*animaduertisset rem publicam ab nefariis sceleratisque ciuibus oppressam...Italiam urbemque Romanum in libertatem uindicauit*’); cf. Syme 1939: 155, accepting this an authentic report of Pompeius’ justification for taking up arms.

<sup>528</sup> Cic. *Leg. agr.* 2.3, referring to the nobility’s monopoly of the consulate, which Cicero describes as a ‘position which the nobility holds, fortified by guards and walled off by every means’ (*locum, quem nobilitas praesidiis firmatum atque omni ratione obvallatum tenebat*). By presenting himself as an outsider to the political élite, indebted to the *populus* alone for his consulate, Cicero strengthens his claim to have the people’s best interests at heart when he speaks out against Rullus’ agrarian law: cf. Jonkers 1963: 57. It is not the nobility, however, but Rullus and the prospective *decemviri* whom Cicero presents are a *factio* bent on tyranny.

<sup>529</sup> E.g. Memmius in Sall. *Iug.* 31.25; Morstein-Marx 2004: 230-1.

orations as an attack on ‘the senate’ (22.34.3: *criminando...senatum*), but the words he puts into Herennius’ mouth target the *nobiles* specifically (at 22.34.4, 7, 8) with a combination of familiar anti-noble rhetoric and accusations of secret alliances and tyranny. Herennius blames a conspiracy of the *nobiles*, including Q. Fabius and the consuls, for deliberately starting and prolonging the war:

ab hominibus nobilibus, per multos annos bellum quaerentibus,  
Hannibalem in Italiam adductum; ab iisdem, cum debellari possit,  
fraude bellum trahi (22.34.4).

Hannibal had been brought into Italy by noble men, who had been seeking a war for many years; by these same men the war, although it could be ended, was being dragged out through deceit.

Herennius justifies this last point with a reference to Minucius’ (tenuous) victory (22.34.5), then blames Fabius for having split their armies in a deliberate attempt to imperil his *magister equitum*, the better to be given the credit for saving the soldiers he endangered (22.34.6). Next, the tribune turns on the consuls, accusing them too of intentionally drawing out the war by practising ‘Fabian arts’, *Fabianae artes* (22.34.7) – a reference the consuls’ adoption of Fabius’ tactics after he resigned his dictatorship (and related by Livy in positive terms at 22.32.1-3). Again Herennius alleges that the entire *nobilitas*, not just the commanders, is behind these efforts to prolong the conflict, that ‘A pact had been made between all the nobles for this purpose’ (22.34.7: *id foedus inter omnes nobiles ictum*). The echoes of the rhetoric of *nobilis* conspiracy and domination are obvious: Sallust’s *factio* could easily be substituted for Livy’s *foedus*. The solution that Herennius offers also draws on anti-*nobilis* rhetoric. He declares that the war can only be ended by ‘true plebeian consul, that is, a new man; for the plebeian nobles were already initiated into the same rites and had begun to despise the plebs from the moment they had ceased to be despised by the patricians’ (22.34.7-8: *nec finem ante belli habituros quam consulem uere plebeium, id est, hominem nouum fecissent; nam plebeios nobiles iam eisdem initiatos esse sacris et contemnere plebem, ex quo contemni patribus desierint, coepisse*). Like Sallust’s Marius, Herennius uses the trope of the degeneration of the *nobiles* to justify the need for a *nouus homo* to conclude a war. It is hardly surprising, however preposterous it might be, that the tribune follows this argument by suggesting that the *patres* have conspired to prevent a new man’s election, with the consuls absenting themselves

from Rome and the augurs annulling the appointment of the dictator, so that the *comitia* were now *in patrum potestate* by means of an interregnum (22.34.9-11).

The absurdity of Herennius' arguments, however, does not detract from their effectiveness. Even before paraphrasing the tribune's orations Livy establishes that they aroused *fauor* towards C. Varro by provoking *inuidia* towards his opponents in the senate (22.34.3: *criminando non senatum modo sed etiam augures...per inuidiam eorum fauorem candidato suo conciliabat*). The chapter following Livy's paraphrase of Herennius' speech confirms this. It begins: 'When the plebs was inflamed by these speeches' (22.35.1: *cum his orationibus accensa plebs esset*), and goes on to describe how Varro alone of six candidates (three patrician, two plebeian but 'of noble households', *nobilium familiarum*) was elected; that is, without a colleague in the consulate (22.35.2). This extraordinary result testifies to the power of Herennius and Varro's oratory: the success of their rhetoric is so comprehensive that it turns the people against not only Fabius and his strategy but against the *nobilitas* as a whole. Indeed, the *nobilitas* is only able to ensure the election of a colleague for Varro by making all the other contestants withdraw from the contest, so that L. Aemilius Paullus can be elected unopposed (22.35.3-4). As in the challenge to Fabius' leadership at 22.25-6, so here inflammatory oratory dominates public discourse, with no effective challenge offered to the demagoguery of Varro and Herennius.

The hold exercised by the former over politics outside of the senate through his oratory is demonstrated one more time at 22.38.6-12.

contiones, priusquam ab urbe signa mouerentur, consulis Varronis multae ac feroces fuere denuntiantis bellum arcessitum in Italiam ab nobilibus, mansurumque in uisceribus rei publicae si plures Fabios imperatores haberet, se quo die hostem uidisset perfecturum (22.38.6-7).

Before the standards were moved from the city, there were many insolent *contiones* of the consul Varro, who was declaring that the war had been summoned to Italy by the *nobiles*, that it would remain in the very bowels of the state if they had more Fabii for generals, that he himself would end the war the day he caught sight of the enemy.

Varro's *multae ac feroces contiones* appeal to the anti-Fabian sentiment and the fears of *nobilis* tyranny that won him his consulate. Unlike Q. Fabius, Paullus does at least urge a more cautious approach to Hannibal in public, but unlike his colleague he speaks at only one *contio*, the day before the army's departure (22.38.8). Livy's

summary of his speech (22.38.8-12) shows it to be calm and measured: its criticism of Varro is temperate and sensible, urging that the campaign be conducted ‘cautiously and with deliberation’, *caute ac consulte*, instead of with the *temeritas* that has hitherto proved disastrous. The speech shows that Paullus has a safer strategy in mind, as Livy remarks (22.38.13), but this does nothing to persuade his audience, or the Roman people in general, to support a Fabian strategy in the coming campaign. For once again Livy has anticipated the effects of a character’s oratory while introducing it, noting at 22.38.8 that it was ‘more truthful than pleasing to the people’ (*uerior quam grator populo*). The Roman public, indulged by the rich invectives of Varro and his ilk, have no appetite for the more modest fare offered by Paullus.

#### 4.2.3 The dangers of contional oratory

The outcome of Varro and Paullus’ campaign can hardly have been unknown to Livy’s audience, but still he has Q. Fabius anticipate the catastrophic defeat at Cannae in the advice he gives to Paullus (22.39.8). Fabius stresses that the only effective way to deal with Hannibal is to adopt his own strategy, just as the previous years’ consuls had (22.39.9-17). Fabius, characteristically, advises Paullus to ignore the damage that avoiding direct engagement with the enemy will do to his reputation (22.39.18-20). But the consul, although a cautious general who recognises the danger Varro’s command poses, is no second Fabius: he has suffered popular displeasure before, and cannot ignore it as Fabius does. Instead, he says he would rather face the enemy’s swords than the plebs’ ire another time.<sup>530</sup> Fabius’ ability to despise *rumor* makes him unique in these chapters of Book 22, in which unbridled speech is so prominent and potent in Roman affairs.

Fabius interprets the dangerous potential of Varro’s oratory in military terms: ‘“And someone who arouses such tempests now by boasting about battles and battle lines among civilians – what will he do among the armed youth, where deed follows words forthwith?”’ (22.39.7: ‘*et qui tantas iam nunc procellas proelia atque acies iactando inter togatos ciet, quid inter armatam iuuentutem censes facturum et ubi*

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<sup>530</sup> 22.40.3: *se populare incendium priore consulatu semustum effugisse...si quid aduersi caderet, hostium se telis potius quam suffragiis iratorum ciuium caput obiecturum* (‘He had escaped scorched by a popular conflagration in his previous consulate...if it turned out badly, he would offer his head to the swords of his enemies rather than to the votes of enraged citizens’). The details of the *populare incendium* that haunts Paullus have been lost with Livy’s account of his first consulate, but that the ‘conflagration’ was political is suggested by the word *suffragiis*.

*exemplo res uerba sequitur?* ') But the causal rôle of speeches and *contiones* in the narrative of the events that took the Romans from a position of relative security under Fabius' dictatorship to the nadir of their fortunes in the Hannibalic War suggests that the threat that demagogic oratory poses is far more acute in domestic than in military affairs. Minucius' orations do indeed inspire recklessness among his soldiers, as the example of L. Hostilius Mancinus demonstrates. But the harm caused by Minucius' oratory in the field pales in comparison to the harm caused by similarly demagogic oratory at Rome. After all, the choice of an aggressive approach to Hannibal over Fabius' cautious strategy is a political one, and every one of the fateful decisions taken by the Roman people on its course to its catastrophe at Cannae is heralded and influenced by oratory. Metilius' *contiones* undermine the people's trust in Fabius and his strategy; Varro's support for the tribune's bill on the day of the *rogatio* secures its passage, leading to the appointment of Minucius to a position of equal authority with the dictator. Fabius manages to avert disaster in the field, but the popularity that Varro has earned by advocating Metilius' bill, and more generally as an orator who has made a career out of attacking the *boni* and the *principes*, sets him on course to win the consulate and the Romans on course to disaster again. Herennius' *contiones*, by attaching the odium of the Fabian strategy to the *nobilitas*, hamstring the noble opposition to Varro's candidacy and secures his election with overwhelming popular support. Finally, Varro's *contiones* before the start of the campaign ensure that his policy of direct attack is favoured over his colleague Paullus' preference for caution, since the latter fears displeasing the people by obstructing the strategy they favour. Public oratory is thus the driving force in the narrative of 22.14-38, propelling the Romans from one bad political decision to another on an inexorable course to their defeat at Cannae.

Long before Cannae, Livy's invidious characterisations of this oratory (and of the men who use it) signal that he intends it to be viewed negatively, but the bloody culmination of its influence on Roman policy illustrates its dangerous potential in the most dramatic fashion possible. The series of speeches and references to speech in 22.14-38 thus constitutes an extended negative *exemplum*, a warning about contional demagoguery. What distinguishes this from the other negative *exempla* discussed in the previous chapter is not only its protraction across several interlinked episodes, but the striking absence of any effective opposition to it. On most other occasions in which oratory plays an overtly negative rôle, that oratory is challenged, usually by a

speech that reasserts the proper political order, and usually successfully. In Book 22, however, there is no notable resistance to the demagogues' domination of the *contiones*. In keeping with the Ennian tradition, Fabius ignores his detractors and refrains from responding to their criticisms in public: he does not deign to defend himself from Metilius in a *contio* of his own, nor does he bother to stay in Rome to present his case at the meeting before Metilius' *rogatio*; and although he does offer a defence of his strategy in the senate he fails to enlist its support. Livy does of course describe the opposition of the *patres* to Varro's consular candidacy, but he makes no mention of any *contiones* held by Varro's opponents; instead, he focuses entirely on Herennius' public attacks on the *nobilitas*. The summary of Paullus' single speech at 22.38.8-12 is the only reference to any public reply to the opponents of the Fabian strategy, but this meets with no more enthusiasm than Fabius' speech to the senate. The absence of serious resistance to the anti-Fabian oratory of Book 22 contrasts with the emphasis on that oratory's effectiveness. Again and again, Livy highlights the support and popularity the orators earn for themselves and their political causes by their speeches.<sup>531</sup> Demagogic oratory completely dominates politics in the lead up to the Battle of Cannae; indeed, it is only the shock of the massacre that breaks its hold over the *res publica*.

There is therefore a distinct tension in the narrative of 22.12-38, between Livy's portrayal of demagogic oratory as malicious, deceitful, and harmful to state on the one hand, and its manifest effectiveness as a political tool on the other. This tension rather undermines the exemplary value of these chapters, because while the narrative clearly shows that good citizens should not let themselves be seduced by this kind of oratory, it also reflects no confidence in the Roman people's ability to resist that oratory when it is allowed to dominate public discourse.

The pessimistic implications of this series of episodes are not really borne out in the extant books of the *AUC*, however. Speakers occasionally employ comparable rhetoric to negative effect, as in the case of Baebius' opportunistic attacks on the *nobiles* before the first vote on the Second Macedonian War (31.6.4), but such rhetoric is typically challenged and defeated, just as P. Galba challenges and overturns the *comitia*'s initial decision by reasserting the *auctoritas* of the senate (31.7). At no other point in Books 21-45 does oratory exercise such a malign and comprehensive

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<sup>531</sup> 22.14.1, 15; 22.25.17; 22.26.2-4; 22.34.2-3; 22.35.1-2; 22.40.4.

influence over public affairs as it does in 22.12-38. But the distinctive rhetoric that characterises contional oratory in these chapters, with its attacks on the *nobilitas* and accusations of tyranny, may indicate that it played a prominent part in Livy's later books. Again, although there are occasional echoes of late Republican rhetoric in the remaining books, they never occur with the same frequency as they do in the sequence of speeches between Trasumennus and Cannae. This implies that this type of rhetoric was rare in the years covered by Books 21-45; the concentration of it in Book 22 is an aberration in the politics of the middle Republic as Livy imagined it.

But this aberrant cluster of late Republican rhetorical tropes inevitably draws the reader's thoughts to more recent politics, and to the rôle invective had in Rome's descent into strife and civil war. If, as seems likely, Livy's account of the decline of the *res publica* included inflammatory speeches by demagogues at *contiones*, Book 22 may foreshadow the ruinous part that oratory was to play in those later books. If this is the case, then it is all the more significant that Livy depicts the Roman people as incapable of resisting manipulation by unscrupulous but effective orators. In Book 22 the only thing that breaks oratory's spell over the populace is a Sallustian *metus hostilis*, the terror of the existential threat posed by Hannibal in the aftermath of Cannae.<sup>532</sup> In later years, of course, the Romans had no serious external threats to fear. Sallust famously dated the beginning of Rome's political turmoil to the elimination of Carthage,<sup>533</sup> but regardless of whether Livy concurred with his predecessor he implies in Book 22 that without the fear of a foreign enemy to curtail it demagogic oratory could lead the state into *discordia* and even imperil Rome's very existence.<sup>534</sup> Hence, the speeches in the episodes discussed above not only illustrate the danger inherent in demagogic oratory, but may well anticipate the realisation of that danger in Livy's lost later books too.

Thus, Book 22 problematises contional oratory. The previous chapters of this thesis demonstrated that *contiones* are an integral part of the *res publica* as Livy imagines it, despite occasionally being (mis)used to serve the self-interest of

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<sup>532</sup> Sallust's influence on the early part of Livy's third decade has long been recognised, the most obvious evidence of which is Livy's characterisation of Hannibal at 21.4.2-9, which is modeled on Sallust's portrait of Catilina (*Cat.* 5.3-5): see Walsh 1982: 1067; Clauss 1997: 169-82; Rossi 2004: 376-7.

<sup>533</sup> Sall. *Cat.* 10.1-3; cf. *Iug.* 41.2-5.

<sup>534</sup> Rossi 2004: 376-8 also recognises a Sallustian theme of decline in the *AUC*, and argues that for Livy the beginning of Rome's moral decline started not with the defeat of the Punic enemy in 146, but with their defeat at Zama in 202.



individual politicians, and their capacity to foment *discordia*. In 22.14-38, however, *contiones* and public oratory are depicted unambiguously as harmful to the *res publica*. They serve the ambition of self-interested and dangerously reckless men such as M. Minucius and C. Varro, at the expense of Q. Fabius Maximus, an exemplary figure comparable to Camillus in the *AUC*, whose leadership at home and in the field saves Rome after the defeat at Trasumennus, and also at the expense of the *nobilitas*, here closely identified with the senate and its *auctoritas*. In so doing, contional oratory not only undermines the cohesion and traditional dynamics of leadership in the state: it actually represents an existential threat to the *res publica* by encouraging the Romans to adopt more aggressive tactics in place of Fabius' strategy, which is consistently portrayed as the safest and most effective way of dealing with Hannibal. Livy does not depict *contiones per se* as dangerous; rather, it is a specific kind of rhetoric, employed by a specific kind of orator, that poses a threat to the state. But he does imply that this kind of oratory – characterised by an aggressive anti-*nobilis* rhetoric that was common in the late Republic – has the potential to dominate the *contiones*, and through the *contiones* exert a malign influence over legislation and elections. The *contio* is therefore problematic because, being indispensable to the day-to-day functioning of the state, it represents an open forum through which irresponsible orators can exercise political power. And the destructive potential of allowing this oratory a forum is amply demonstrated by the disastrous culmination of its political influence at the Battle of Cannae.

Given this potential, it is somewhat surprising that contional oratory never again exercises such an unambiguously negative influence over Roman affairs in the extant books. But this is consistent with Livy's depiction of the years covered in the remaining portions of his narrative as a period of comparative stability at Rome. The demagogues who occasionally appear in these books exert only a fleeting influence over public affairs, as the previous chapter showed. Book 22 illustrates that the *populus* that constitutes the audiences at *contiones* is eminently susceptible to manipulation by articulate orators, however malevolent they might be. It would therefore appear that responsibility for limiting the influence of demagogues lies not with the people, who demonstrate no innate resistance to oratorical influence, but with the senatorial élite; this is indeed the impression given by the analysis of contional oratory in the preceding chapter. So, like the other cases discussed in this chapter, the supremacy of demagogic oratory in 22.14-38 represents a temporary failure of

Rome's traditional leadership. If the argument that this particular case, with its recognisably first-century rhetoric, presages the destructive rôle that contional oratory was to have in Livy's account of the collapse of order at Rome, then this analysis would suggest that increased power of the demagogues in the later books resulted not from any change among the *populus* – which was already easily influenced – but from a decline in the quality of the senatorial order's leadership.<sup>535</sup>

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<sup>535</sup> If correct, this analysis would mean that Livy's explanation for late Republican *discordia* differs from Sallust's, which, envisaging a general moral decline, lays the blame on the *populus* for abusing its *libertas* as well as on the *nobiles*: *Iug.* 41.5.

## Conclusion

At the start of his preface, Livy justifies his decision to embark on his great project by describing the satisfaction it will bring him to memorialise the achievements of the Roman nation:

iuvabit tamen rerum gestarum memoriae principis terrarum populi pro  
uirili parte et ipsum consuluisse (praef. 3)...

it will be pleasing, however, to have done my part as a man and taken  
thought for the memory of the things accomplished by the world's  
foremost people...

The verb Livy uses to convey the act of memorialising, *consulere*, is unexpected in this context, and for Livy's Roman readers it could not have failed to evoke the traditional duties of Roman magistrates, especially the consuls, and of the senate.<sup>536</sup> The choice of this verb indicates that the purpose of the *Ab urbe condita* is not simply to preserve and pass on the memory of the Roman past, as other histories do, but to give that memory the kind of publicly-minded consideration that Rome's leaders were expected to give the affairs of state.<sup>537</sup>

Thus, Livy frames his history as a political project from the outset. Yet, for much of the last century, the political themes of the *AUC* rarely received more than a cursory treatment by scholars, who were often dismissive of its author's knowledge of and interest in public affairs. In recent years, however, many assumptions about Livy, as well as about the nature of politics in the Roman Republic, have been reassessed. This thesis joins a growing body of scholarship that takes the political project outlined in Livy's *praefatio* seriously, and approaches the *AUC* as an explicitly political text.

It also follows recent precedents in locating the politics of the *AUC* in the tumultuous late Republic. While it was once more-or-less taken for granted that the *AUC* was 'Augustan' in conception, outlook, and political ethos (insofar as it was admitted to have had one), some recent treatments have made the case for interpreting Livy's political agenda as a response to the turmoil that engulfed the Roman state

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<sup>536</sup> Vasaly 2015: 22 suggests that the more commonplace *tradere* or *mandare* would have been more expected in what at first glance appears a hackneyed statement of an historian's purpose.

<sup>537</sup> Kraus 1997: 52; Vasaly 2015: 22-4; cf. Moles 2009: 56-7.

during his youth.<sup>538</sup> Vasaly's study of the first pentad, in particular, demonstrates how fruitful it can be to read the *AUC* as a response to internal strife and civil war. It shows that the history represents Livy's efforts to do his civic duty, 'his part as a man' (*praef. 3: pro uirili parte*), by giving his fellow-citizens an account of the Roman past that offers lessons about, and solutions to, the *discordia* that had plagued their state in their own lifetimes.<sup>539</sup> And those solutions are not 'Augustan' in any meaningful sense; rather, Vasaly argues, they are as Republican as the problems they address:

Livy's earliest books...proceeded from the premise that the fundamental crisis facing Rome was the corruption of the system [he] identified with the possession of civic freedom for its citizens and worldwide imperium for the state. The challenge to which [Livy] brought his unique gifts was thus the revival of the republic *as a republic*...a system whose *libertas* was embodied in a form of the traditional power and status exercised by the Roman senate and people in the generations that preceded the civic breakdown of the Gracchan period.<sup>540</sup>

As the conclusion to Chapter 1 noted, however, Vasaly distinguishes the first pentad's historical and political point of reference from that of the later books: the former, she writes, looked back to the Republican past, the latter, implicitly, to the 'Augustan future'.<sup>541</sup> It is certainly true that there are significant differences between the visions of Roman politics that are presented in the two separate portions of Livy's surviving work. Comparing Vasaly's findings and those of the preceding chapters of this thesis will serve to highlight what is distinctive about Livy's treatment of politics in Books 21-45; it will also show, however, that the political outlook of these books too is grounded not in the nascent principate under which they were written, but in the upheaval of the late Republic and the triumviral interregnum that followed it. A comparison with Vasaly's findings will therefore highlight how this thesis sheds new light on the aims and functions of Livy's history, and on his understanding of the Roman political system.

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<sup>538</sup> N.B. the introductory remarks on the background and context of the *AUC* in Vasaly 2015: 1-8; cf. Haimson Lushkov 2015: 20-1.

<sup>539</sup> Vasaly 2015, esp. 122-37.

<sup>540</sup> Vasaly 2015: 123.

<sup>541</sup> Vasaly 2015: 123.

*tibi tuaeque rei publicae quod imitere capias...*

As the Introduction to this thesis stressed, the most obvious difference between Roman politics as Livy depicts it in his early books, on the one hand, and in Books 21-45 on the other, is the frequency of *discordia* in the former and the relative absence thereof in the latter. Books 2-6, in particular, are structured around the alternation of external threats and internal crises,<sup>542</sup> whereas external affairs take up a much larger proportion of the narrative of Books 21-45, and political conflicts are relatively infrequent even in the limited space that Livy allots to internal affairs. In large part, this difference reflects the distinct rôles that the two surviving portions of Livy's work played in the *AUC*'s grand narrative of Roman history: the first decade relates the early growth of the state, charting the parallel development of its political system and its Italian hegemony; the third, fourth, and fifth decades chart the rapid expansion of Roman *imperium* to the west and east. The evolution of the *libera res publica* is a major focus of the early books, whereas the focus of the later books is really the wars and foreign conquests that created the empire, and as such politics, and hence *discordia*, plays a comparatively minor rôle in the narrative of those books.

But the difference between the parts played by political conflict in the two surviving portions of the *AUC* is not only one of frequency, but one of intensity or severity. In the first pentad, as Vasaly's analysis shows, the Roman state's very existence is repeatedly threatened by the *discordia* that prevails between the patricians and the plebeians, because it leaves Rome vulnerable to her enemies and, on a number of occasions, encourages would-be tyrants to seize power.<sup>543</sup> In the books that have been the subject of this thesis, however, Rome is never threatened by tyranny, notwithstanding certain unscrupulous orators' suggestions to the contrary. The protracted struggle between plebeians and patricians over political and social rights that is central to the narrative of Books 2-6, driving the cycle of internal conflict,<sup>544</sup> is long over by the time of the events related in Books 21-45. As such, the plebeians never threaten *secessio* in the later books. Moreover, the plebeians' advocates, the tribunes, the source of so much of the discord in the early books,<sup>545</sup> play a less

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<sup>542</sup> N.B. Vasaly's admission, despite her own focus on the first pentad, that 'the separability of the first from the second pentad of the *AUC* is an artificial construct' (2009: 123-4).

<sup>543</sup> Tyranny and would-be tyrants: Vasaly 2015: 55-76, 104-7, 126-9.

<sup>544</sup> Vasaly 2015: 135-6.

<sup>545</sup> See Vasaly 2015: 96, 135.

negative part in politics in Books 21-45. The preceding chapters of this thesis have highlighted the change in the rôle of the tribunes of the plebs as Livy's history progresses, from an almost entirely negative force for disruption in the early books, as Vasaly has shown,<sup>546</sup> to a more typical magistracy that, although capable of harm, also plays a constructive part in public affairs, cooperating with the senate and other magistrates, and even resolving conflicts. And while still a frequent source of conflict themselves, the tribunes in Books 21-45 never provoke anything approaching the upheaval that their predecessors did: obviously there are no great battles over political rights comparable to the Licinio-Sextian *rogationes*, but also notably absent from these books are the land redistribution bills that Livy considers so toxic to the *res publica* (2.52.2). Indeed, what internal discord there is in these books does not result in anything as dangerous as *seditio*. Livy's very language in Books 21-45 reflects the diminished severity of the political conflicts in those books. The term *seditio*, like *discordia*, is rarely used in relation to Roman affairs in Books 21-45.<sup>547</sup> Livy tends to refer to political conflicts and disputes at Rome as *certamina* or *contentiones*, terms that convey discord without the suggestion of peril to the *res publica* inherent in *seditio*.<sup>548</sup> The most violent disturbance of Roman politics that occurs in these books is the disruption of a tribunician *contio* by Postumius Pyrgensis and his fellow *publicani*, and even this is described as only 'nearly a great commotion' (25.3.9: *magno prope motu*) – in the end, it does not amount to *seditio*.<sup>549</sup> (The Bacchanalia affair, while depicted as a threat to the state, is not a product of *discordia* within the Roman polity, but of the malign influence of a foreign religion on Roman morals.)

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<sup>546</sup> Vasaly 2015: 96; cf. 113-16.

<sup>547</sup> *seditio* is most frequently applied to foreign states and soldiers in Books 21-45. The term is occasionally used in relation to Roman soldiers, e.g. during the mutiny at Sucro (28.24-38), or to describe mutinous behaviour, e.g. of the legionaries before Cannae (22.42.4; 22.44.5). The spectres of *seditio* and *secessio* are however invoked by orators at other points in Books 21-45, e.g. by the Petillii, who label Africanus' departure from their *contio* a *secessio* (38.52.5), and by Cato in his description of the women who have come out in public to urge the repeal of the *lex Oppia* (34.2.7). But the accuracy of this rhetoric is not upheld by the narrative, which labels both affairs *certamina* (34.1.1; 38.50.1); note also Valerius' criticism of Cato's use of these invidious terms (34.5.5-6; 34.7.14).

<sup>548</sup> On the political significance of *seditio* and the related term *sediciosus*, see Hellegouarc'h 1963: 135-7, 531-2; Robb 2010: 150-62.

<sup>549</sup> This impression is reinforced by the words of the consul Q. Fulvius Flaccus, who anticipates *seditio*, but only if the assembly is not dismissed promptly by the tribunes (25.3.19: '*nonne uidetis*' inquit '*...rem ad seditionem spectare, nisi propere dimittitis plebis concilium?*'), as in fact it is. Cf. the popular response to the consular edict compelling citizens to furnish oarsmen for the navy, which Livy describes as so indignant that it lacked only a leader rather than fuel for *seditio* (26.35.4: *tanta indignatio fuit ut magis dux quam materia seditioni deesset*). The mutinous attitude aroused by M. Minucius Rufus is also depicted as almost, but not quite, *seditio* (22.14.1: *prope de integro seditio*, 'nearly the start of a *seditio*').

The infrequency and mildness of political upheaval in Books 21-45 supports the contention that was made in the Introduction, that these books represent the apex of political harmony, *concordia maxuma*, that Roman tradition and contemporary historiography located in what modern historians call the middle Republic. A distinct phase of Roman political history, as Livy understood it, is represented in the part of the *AUC* that has been the subject of this thesis, and it is sufficiently distinctive to merit consideration in its own right. But although Books 21-45 represent a discrete moment in the *AUC*'s history of the *res publica*, there is considerable continuity between the political themes of these and the earlier books, and this continuity confirms that Livy's depiction of politics in the extant later books was inspired and shaped by the same late Republican concerns identified by Vasaly.

Oratory loomed large in the political life of the *res publica*. It was a regular feature of the meetings of the senate and of the *populus*, the means by which matters of public interest debated and communicated to the masses, but, in the late Republic, oratory was also associated with the eloquent demagogues who periodically challenged the status quo and incited discord, sometimes with violent consequences. Oratory plays a similarly ambiguous rôle in the politics of *AUC* Books 21-45, just as it does in the earlier books. Vasaly's study of the first pentad highlights the potential of persuasive rhetoric, particularly when it is addressed to a public audience, to generate *discordia*: 'Livy...recognises the danger represented by the divorce of eloquence from virtue', and illustrates this danger in the numerous episodes in which demagogues foment disorder for their own selfish purposes.<sup>550</sup> But Livy also depicts oratory as a force for good when it is used to maintain or restore *concordia* or to persuade an audience to adopt a wise and moral course of action.<sup>551</sup> Vasaly attributes the ability of virtuous orators such as T. Quinctius Capitolinus, Cincinnatus, and Camillus to persuade and influence their audiences positively, not to their eloquence (or at least not to their eloquence alone), but to their ability to project their personal virtue and *auctoritas* through their speech.<sup>552</sup> These conclusions are largely borne out by the preceding chapters. Livy does not present public oratory as inherently good or bad in Books 21-45: whether a speech or speaker is depicted positively or negatively depends for the most part on the speaker's motives, and sometimes on the effects of

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<sup>550</sup> Vasaly 2015: 131; also see 104-7 and 113-16 on demagogic oratory.

<sup>551</sup> Vasaly 2015: 77-95, 131-2.

<sup>552</sup> Vasaly 2015: 131-2.

a speech regardless of its author's intentions. A speech's effectiveness, however, is not dependent on its author's motives. As Chapter 4.2's examination of oratory in Book 22 makes abundantly clear, self-serving orators who employ the demagogic arts, *populares artes*, to sew *discordia* in pursuit of their personal goals are perfectly capable of successfully manipulating the Roman people, through falsehoods and emotive appeals to their prejudices, into making bad, even dangerous decisions. But the situation in Book 22 is not typical of Livy's third, fourth, and fifth decades, where more often than not demagogues are challenged and defeated by other speakers. The speeches that Livy counterposes to demagogic oratory or, on other occasions, uses to illustrate how potentially harmful decisions were averted, may employ reasoned argument or appeals to *mos maiorum*, religion, and *auctoritas senatus* to persuade their audiences. But the best orators in Books 21-45, like those in the first pentad discussed by Vasaly, are persuasive because their speeches convey their own moral *auctoritas*.<sup>553</sup> There is no better exemplar of this characteristic of Livy's depiction of political oratory in the later books than Ti. Sempronius Gracchus, whose moral authority is reflected in the speeches he makes before the people in defence of the Scipiones and against his fellow tribune Aburius in the senate. In each instance, Gracchus' effectiveness as an orator derives above all from his disinterested explication of the ethics of the cases in question, which recalls the people to whom his speeches are addressed to their moral senses, thus averting injustice and restoring *concordia*.

As for the causes of *discordia* in Books 21-45, these too are essentially the same as those that Vasaly identifies in Livy's early books. Self-interest, particularly in the form of a desire for power and prestige or *ambitio*, is at the root of the attempts of Sp. Maelius, Sp. Cassius, App. Claudius the decemvir, and M. Manlius Capitolinus to establish tyrannies; it is also the cause of much of the strife provoked by tribunes of the plebs.<sup>554</sup> Chapter 3 above identifies self-interest as the main source of *discordia* in Livy's extant later books as well, and again, it is unbridled *ambitio* that is behind a large proportion of the political conflicts in these books. *ambitio* is thus the perennial

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<sup>553</sup> As Vasaly notes, the persuasive power of virtue in Livy means that even simple, low-status individuals can be effective orators. Such orators are less common in Books 21-45, but the case of Sp. Ligustinus, the common soldier who moves his comrades to withdraw their objections to the terms of their conscription through his personal example and a simple and honest assertion of deference owed to the *auctoritas* of the senate and magistrates (42.34), demonstrates that the principle remains true.

<sup>554</sup> Vasaly 2015: 134-5.



political vice of the Romans, but it is not their only one. In his *praefatio* (11) Livy stressed that *avaritia* and *luxuria* developed late among the Romans, and even in the years covered by Books 21-45 they rarely cause trouble. On the occasions that they do, however, the trouble they cause is serious: *avaritia* leads to the violent disruption of the *concilium plebis* by the *publicani* at 25.3.8-19, while *luxuria* provokes the struggle over the repeal of the *lex Oppia*, which sees tribunes of the plebs besieged in their homes and pressured to withdraw their veto (34.1.1-8.3). More common political vices in these books are a disregard for the public good for the sake of personal associations and *inimicitiae*, and, in some cases, a blatant disdain for the *auctoritas* of the senate. Books 21-45 illustrate how self-interest in the form of these vices can provoke disunity in the state, disrupt its administration, and in the worst cases endanger the existence of Rome itself.

As self-interest is the cause of most political conflict in Books 21-45, so *concordia* depends a willingness to prioritise the good of the *res publica*, even at the expense of personal interests. Vasaly defines this quality as *moderatio*, a virtue that Livy, in an authorial aside (3.65.11), implies is essential to maintaining peace within the state.<sup>555</sup> In Livy's account of the early Republic, *moderatio* is the hallmark of good leadership and, when exercised by both the plebs and the senatorial élite, averts the worst excesses of *discordia*. The plebeians as a social class have less opportunity to display *moderatio* in the books that are the focus of this thesis, as the grievances that motivated them in the first decade have by this point been addressed.<sup>556</sup> Among the political élite, however, *moderatio* remains a positive and beneficial trait. Time and again, magistrates and other prominent figures display *moderatio* by settling disputes peacefully, often following the advice of the senate. In fact, a willingness to be guided by the *auctoritas* and *consensus* of the senate, by its collective moral authority and wisdom, is the other foundation of the *concordia* that prevails in Books 21-45. This *concordia* is thus based on the conduct of Rome's leaders, individually and collectively. Individual members of the ruling élite, in or out of office, typically behave in a manner commensurate with the general good of their fatherland. Magistrates use their position and power for *res publica*, not *res priuata*, guided by

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<sup>555</sup> Vasaly 2015: 136-7.

<sup>556</sup> A noteworthy plebeian exemplar of *moderatio* in these books is Sp. Ligustinus, mentioned above, whose willingness to forgo the rank and dignity that ought by right to be his out of deference to the *auctoritas* of the senate and magistrates (42.34.13-15) ambly demonstrates this quality.

*auctoritas consensusque senatus*. The best leaders, in fact, perform the duties of their offices with an instinctive awareness of what the *patres* would wish, as Q. Fabius Maximus does in Book 22 when he advises the senate on the proper course of action to take in the wake of military defeats, or as Ti. Sempronius Gracchus does in Book 38 when he defends Scipio Africanus, and in so doing preserves the honour of the Roman nation. By furnishing his reader with *exempla* such as these, Livy illustrates the kind of personal conduct that, when practised widely, creates a society and a political order that is resistant to the evils of *discordia*.

This study of Books 21-45 therefore demonstrates, contrary to Vasaly's implicit differentiation between Livy's first pentad and his subsequent books, that the latter are in fact shaped by a late Republican concern for *concordia* and *discordia*, just as the earlier books are, and that the solutions they offer to political problems are equally 'republican', in the sense that they reaffirm the traditional moral principles and power structures of the *libera res publica*. There is no Augustan turn in the politics of the extant later books. When he came to write Books 21-45, Livy was clearly conscious that the cycle of civil war had ended, at least for the moment, and that his countrymen seemed to have recovered their concern for *concordia*; and yet the problems that had provoked *discordia* in the past decades remained the focus of his treatment of politics. This thesis has therefore shown that the political themes explored so deftly by Vasaly in her analysis of the first pentad remained consistent across the whole of Livy's surviving work. The didactic purpose of the third, fourth, and fifth decades was the same as that of the first: to present the Roman people with models of behaviour that would benefit their state as much as themselves, models of virtuous citizenship to emulate as well as models of harmful self-interest to avoid.

Yet, although the two surviving portions of the *AUC* share an overarching didactic aim, they nevertheless have distinct lessons to offer about Roman politics. The world of the first decade, especially of Books 2-6, with its would-be tyrants, its divided society, its radical tribunician bills, and its civil bloodshed, would have been all too familiar to Livy's contemporaries, and the pertinence of Livy's account of the early Republic would have been obvious to an audience living with the legacy of late Republican *discordia*. Although these books contain many individual positive *exempla*, their portrayal of the young *libera res publica* as a whole – rife with internal conflict that repeatedly threatens its very existence – functions as a negative *exemplum* about social and political discord. Books 21-45, on the other hand, present

the reader with a vision of a mature Roman state that is characterised, above all, by how well it functions. For the most part, the political community depicted in these books conducts its internal affairs peacefully and efficiently, and this allows it to endure and ultimately prevail over any external threat, even one as deadly as Hannibal. And though by no means free of political conflict, this mature polity demonstrates again and again its capacity to resolve its problems, to prevent them from generating *discordia* on a scale comparable to that depicted in the earlier books of the *AUC*, or indeed on a scale that would have been familiar to Livy's contemporaries. In other words, these books offer the *res publica* of the late third and early second century as a positive *exemplum*, a lesson on the benefits of *concordia*.

It remains to consider the nature of this *res publica*, the Roman state as Livy depicts it in Books 21-45. It will come as no surprise to any reader of Livy that his vision of the ideal republic is élitist: the *principes*, individually and collectively, are the focus of his depiction of political matters, determining the course of Roman affairs for better or for worse, while the *populus* are relegated to a subordinate rôle in both politics and the narrative as a whole. But the extent to which the Roman people is subordinate to the ruling élite in Books 21-45 is quite remarkable. Once again, a comparison of this thesis' findings with those of Vasaly proves illuminating.

Vasaly's research shows that Livy does not attribute a great deal of political wisdom to the *populus Romanus* in his early books. She points out that the people are characterised above all by their 'emotional intensity and volatility', with their reason and self-control frequently gives way to 'anger (both destructive and constructive) and fear, but also shame, patriotic pride, greed, courage, and grief, the last often expressed through the suffering of women'.<sup>557</sup> The people do on occasion display *moderatio*, 'transcending emotion out of rational concern for the common welfare', for example by electing only patricians to the military tribunate (4.6.11) despite having gone to great lengths to open the office up to their own order.<sup>558</sup> More often, however, the people are induced to pursue wise and constructive courses of action by oratory, usually that of leading figures in the state, be they patricians or moderate plebeians.<sup>559</sup> Without leaders, however, the plebs are depicted as rudderless and

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<sup>557</sup> Vasaly 2015: 98.

<sup>558</sup> Vasaly 2015: 99.

<sup>559</sup> Vasaly 2015: 99.

inarticulate, incapable of engaging effectively in public affairs, except to *secessio* or violence (such is the plebs' condition before the establishment of the tribunate and during its suspension by the decemvirs).<sup>560</sup> Vasaly therefore shows that the efficacy of the people's engagement in affairs of state depends on leadership. And although they can be persuaded to behave with *moderatio*, the people do not mature as political actors in their own right over the course of the books that are Vasaly's subject. Using the people's responses to tribunician land bills as a test case, Vasaly demonstrates that there is no discernible improvement in the political acumen of the *populus* in Books 2-5: the masses are every bit as susceptible to the seductive arts of the demagogue at the end of this section of the *AUC* as they are at its beginning.<sup>561</sup> The '*populus Romanus* exhibits a fixed temperament' in the first pentad,<sup>562</sup> and the same is true of the remaining extant books. In Books 21-45, the *populus* is still prone to emotional outbursts (e.g. the terror and grief that grips the city after reports of Hannibal's victories at 22.7.6-13 and 22.54.8), and as the section on political speech in Book 22 in the preceding chapter (to say nothing of the many other examples discussed above) shows, it is as susceptible to manipulation by demagogic orators as it ever was during the 'Struggles of the Orders'. It must be emphasised that this does not reflect an anti-senatorial tendency among the people, since in Books 21-45 the people are equally susceptible to the positive influence of scrupulous and often openly pro-senatorial orators. In fact, in the books that have been the subject of this thesis Livy generally does not ascribe any political agenda or motives to the *populus*. This is because the plebs in these later books, unlike their ancestors, have no serious long-term political or social grievances that might motivate them to pursue their own political goals. Only very rarely does Livy ascribe any sort of political agenda to the *populus* themselves, as opposed to a rabble-rouser from the élite who is manipulating the *populus* for his own purposes. A prominent example, discussed above, is the *populus*' rejection of the bill declaring war on Macedonia. At 31.6.3, Livy explicitly attributes this remarkable refusal to acquiesce in the will of the senate and consuls to the people's weariness of war (he only mentions Q. Baebius' opportunistic speeches on the topic afterwards, almost as an afterthought). There is another example at 26.35.4-8, in which the plebs, pushed beyond the limits of their forbearance by a consul edict requiring all citizens

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<sup>560</sup> Vasaly 2015: 101-5.

<sup>561</sup> Vasaly 2015: 99-101.

<sup>562</sup> Vasaly 2015: 101.

to provide and equip oarsmen for the navy at their own expense, approach the brink of *sedition*. Significantly, Livy explains that *sedition* was avoided not because the plebs lacked cause, but because they lacked a leader (26.35.4: *magis dux quam materia seditioni deesset*). Thus, even this rare display of popular autonomy reflects the necessity of leadership in Roman politics. And that it is so rare for Livy to attribute political initiative to the *populus Romanus* reveals how limited its rôle in public affairs is in the third, fourth, and fifth decades. The people are not passive actors in the Roman state as the historian depicts it, as they cannot always be relied upon to obey the will of their superiors without persuasion. But nor do they play a proactive part in politics; but for the single instance cited above, they are almost entirely reactive, their involvement in politics dependent on the impetus provided by élite characters. The influence of the *populus Romanus* on Livy's republic, which they exert through their assemblies, is for the most part determined and directed by the political élite.

On the other hand, this thesis has illustrated how much Rome's internal stability in Books 21-45 is determined by her leaders and their personal conduct. This concurs with Vasaly's argument that the prosperity of the Roman state in the first pentad depends on the personal qualities of its leaders. Once again, when read alongside scholarship on the first decade, this thesis affords a broader perspective on the Livy's portrayal of Roman politics that highlights both continuity and change across the surviving books of the *AUC*. It demonstrates that the rôles that the historian assigns to the political élite and the masses remain substantially unchanged in the extant books. Livy's *senatus populusque Romanus* is by no means a balanced partnership: throughout the surviving books, the undisciplined and emotional *populus* lacks political direction except when it is provided by the political élite, whose activities, morals, and personal relations, in the senate and out of it, determine and direct Roman affairs, for better or for worse. The fundamental arrangement at the heart of Livy's *libera res publica* does not undergo any significant changes over the course of the extant books – even the admission of plebeians to the senate and magistracies only expands the ruling order, without altering the balance of power between the élite and the masses. Nevertheless, as this thesis has emphasised throughout, there is a real change in the Roman state's circumstances between the early books, especially books 2-6, and Books 21-45. Since the character of the *populus Romanus* has not evolved over the course of the extant books, the *concordia* that characterises Livy's republic in Books 21-45 must reflect an overall change for

the better in the morals and behaviour of Rome's leaders between the first decade and the beginning of the third. Dependent as it is on the quality of its leaders, Livy's is clearly an aristocratic republic.

The didactic purposes of the *AUC* reflect this fact. Although Books 21-45 do contain examples of political conduct that are relevant to ordinary citizens who might attend *contiones* or vote in *comitia*, the majority of *exempla* discussed in this study of Livian politics would be strictly pertinent to members of Rome's traditional ruling élite. This is unsurprising, given that, in Livy's view, it was on its leaders that the internal peace and prosperity of the Roman state depended. Livy's history is therefore no less political in its aims than those of Polybius or Sallust or Tacitus: part of its purpose, like theirs, is to offer political instruction to men in a position to benefit from it. This thesis has shown that this particular section of the *AUC*, Books 21-45, fulfils this function by presenting its readers with a vision of the Roman *res publica* as it was at its height, and as it could be again, if his fellow-citizens could only learn to emulate the habits of their ancestors at their best.

#### *donec ad haec tempora...*

Like many of his contemporaries, R. G. Collingwood found Livy's history rather disappointing. In his survey of historiography from antiquity to the present, he complained that the *AUC* did not convey any sense of change or development in Rome's political history. 'From the beginning of the narrative Rome is ready-made and competent. To the end of the narrative she has undergone no spiritual change.'<sup>563</sup> This thesis has argued, to the contrary, that the narrative in the surviving books of the *AUC* does depict a political community that evolves over time. Collingwood's statement is quite surprising in view of the striking contrast between the *res publica* of the first decade, especially Books 2-6, where self-interest and social division create a continual state of *discordia*, and that of Books 21-45, characterised by its high degree of *concordia* and its resilience in the face of disruptive forces from within and without. The preceding chapters have demonstrated that this contrast is the result of the superior moral sensibilities of Rome's leaders in the later books. Though by no means free of the character flaws and moral failings that generate conflict and endanger the public interest, on the whole the political élite in these books behaves

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<sup>563</sup> Collingwood 1946: 43-4.

with *moderatio* in pursuit of personal goals and due deference to the collective will represented by *auctoritas consensusque senatus*. It is this civic virtue on the part of the Roman leadership that creates and maintains *concordia maxuma* in Books 21-45. And, as argued in the preceding section, the change for the better in the condition of the *res publica* between Livy's earlier and the later extant books therefore reflects a corresponding change for the better in the morals of Rome's leaders, an increase in its collective civic virtue.

Collingwood's claim that Rome remains unchanged to the end Livy's narrative is all the more extraordinary given that the end of Livy's narrative is lost, along with the greater part of the *AUC*. If Livy's history looks to modern readers like a work of antiquarianism, with a static and idealised view of the Roman past, it is only because his later books are not available. But of the original one hundred and twenty books that made up Livy's original project, fully half covered the hundred years that preceded the start of its composition. Far from being antiquarian, Livy's interest is overwhelmingly in recent history. And that recent history, which culminated in the rise of the Second Triumvirate and the proscriptions that claimed the life of Cicero, was a history of Rome's descent into *discordia* – that much is clear from the *Periochae*. Significant changes to Rome's political situation lay ahead in the *AUC*, and even without knowing the details of how Livy treated this period of history it is obvious that it entailed a breakdown in the moral order on which the *concordia* of the *res publica* at its height, reflected in Books 21-45, was based.

This thesis makes a case for reading the extant portions of the *AUC* with the lost later books in mind. Being conscious of what lies ahead can throw the broader themes and exemplary functions of the extant books into sharper relief, as it has Livy's concern with *discordia* and with the political/moral conduct of Rome's leaders in the preceding chapters. It can also facilitate the interpretation of certain episodes or sections of Livy's history, as the final chapter of this study shows. The two case-studies that make up that chapter demonstrate how some of the major political problems of the late Republic – namely, charismatic but ambitious *imperatores* with too high a regard for their own *dignitas*, and demagogic oratory that deliberately provokes social discord and leads to misgovernment – are anticipated in Livy's earlier books. Thus, while Books 21-45 present Rome at the apex of its fortunes, they also contain certain episodes that foreshadow the political decline that later books would recount. Far from being a static and unchanging portrayal of the Roman *res publica*,

Livy's history is the story of that polity's development, from its birth in Books 1-10, to its prosperous maturity, partially preserved in Books 21-45, and finally to its collapse and dissolution.



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